

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CRIMINAL TERM - PART 29
-----X
3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

5 ENRIQUE RIVERA,

6 DEFENDANT.

-----X
7 PAYTON, WADE, HUNTLEY HEARING
Indict. No. 1453/05

320 Adams Street
Brooklyn, New York
June 6, 2006

10

11 B E F O R E:

12 HONORABLE ROBERT J. COLLINI,
Justice

13

14

A P P E A R A N C E S:

15

16

OFFICE OF CHARLES J. HYNES, ESQ.
DISTRICT ATTORNEY - KINGS COUNTY
For the People

17

BY: PHYLISS CHU, ESQ.
Assistant District Attorney

18

19

JOEL K. DRANOVE, ESQ.
For the Defendant
299 Broadway
New York, New York 10007

20

21

22

JUDITH BRUSCA
OFFICIAL COURT REPORTER

23

24

25

1 THE CLERK: Clerk number one on the calendar,
2 indictment 1453/05, Enrique Rivera. Mr. Rivera is
3 incarcerated, produced and before the Court.

4 MR. DRANOVE: Good morning, Judge. Joel
5 Dranove for Mr. Rivera.

6 MS. CHU: For the office of the District
7 Attorney Phyllis Chu. Good morning.

8 THE COURT: This case is on for hearing and
9 trial. Both parties ready?

10 MS. CHU: Yes.

11 MR. DRANOVE: Your Honor, I could not be ready
12 under the circumstances I previously outlined many months
13 ago which continue through today.

14 Just briefly, but accurately recapitulating,
15 in this case where a dozen or more witnesses were
16 interviewed and none of them put a knife in the hands of
17 my client I am striving to speak to the witnesses, but
18 all of their identities have been deleted from all the
19 police reports but for one or two oversights by the
20 prosecutor, which I'll turn to.

21 Now, unfortunately Mr. Ojeda was, in fact,
22 killed, but the open question is who did it?

23 My investigator not more than two weeks ago
24 upon my requesting so and based upon my identifying from
25 police reports a witness by name and phone number,

1 called that witness. That witness informed my client
2 that he was instructed by the prosecutor to speak to
3 nobody, not just the defense attorney, but to nobody
4 about the case. I don't know if he is speaking the
5 truth or not when he said that to my investigator.

6 I know my investigator is a former federal
7 agent, highly respected, past president of the Federal
8 Law Enforcement Association, a colonel in the New York
9 National Guard and not prone to exaggerate.

10 I don't know if I'll ever get an opportunity
11 to speak to witnesses even if they are identified, but I
12 would like to know who they are.

13 Through now I don't know who they are except
14 for guesswork on my part and it's very limited. I don't
15 know what the prosecution submitted to your Honor with
16 respect to its ex-parte application that witnesses
17 identities be concealed.

18 Through now I've been able to learn at least
19 three and maybe more witnesses made statements that were
20 recorded by audiotape. I don't have the tapes.

21 THE COURT: I would like you to point to some
22 authority that shows me you should. Give me case law
23 that says you should. I could show you case law that
24 says you shouldn't.

25 MR. DRANOVE: Prosecutor turned over interview

1 notes of them, but not the tapes. If they want to have
2 it both ways --

3 THE COURT: It's not a matter of both ways.
4 It's a matter of abiding by the prescribed procedure.
5 That is what counsel has done.

6 We are going to proceed to trial. If you have
7 an objection you could note it for the record.

8 MR. DRANOVE: I'll expand on my objection.

9 Since these are witnesses who I believe I
10 would like to interview because whatever they said
11 indicates clearly my client did not have a knife in his
12 hands.

13 THE COURT: Counsel, is there any exculpatory
14 or Brady material you haven't handed over to counsel?

15 MS. CHU: He has pretty much -- he has
16 everything. There is no Brady material.

17 MR. DRANOVE: I ask your Honor to determine
18 that. In a case where my client is accused of stabbing
19 a gentleman, the witnesses say I didn't see a knife in
20 his hands or I saw him punch at a person or I didn't see
21 him do anything, that is not Brady material.

22 THE COURT: That is why is we are going to
23 have a trial.

24 MR. DRANOVE: I'm entitled to know that.

25 THE COURT: Please don't interrupt me while

1 I'm speaking. I'll try my best not to interrupt you.

2 We will have the trial. If during the trial
3 nobody saw your client do something and there is only
4 circumstantial evidence then that will be the situation.
5 If there is no evidence that should be easy for you.

6 MR. DRANOVE: But, your Honor, we have a right,
7 courts spoke on it in Brady, to know now the names of
8 those witnesses who I believe are exculpatory witnesses.

9 THE COURT: I just asked counsel if there are
10 any exculpatory or Brady material that hasn't been
11 handed over and she indicated to me that there is not.

12 MR. DRANOVE: I'm asking your Honor to inquire
13 of the prosecutor are there any witnesses she is aware
14 of who do not put a knife in the hands of my client at
15 the time of the altercation? I believe that is critical
16 defense evidence.

17 THE COURT: Counsel, we will see what the
18 evidence is. Obviously, you'll receive all the material
19 that you're entitled to at the time you're entitled to
20 receive it. We are going to proceed now.

21 If there is Rosario material that has to be
22 handed over prior to the hearing --

23 MS. CHU: It's all been handed over.

24 THE COURT: Let's move forward. I don't mean
25 to cut you short. You have your objection. We will

1 move forward. My understanding is this is a Wade
2 Huntley and Payton hearing.

3 MR. DRANOVE: There is a difference between
4 Rosario and Brady material. Whatever is Rosario still
5 doesn't identify who the people are. I'm talking about
6 Brady material.

7 THE COURT: If counsel moves forward and has
8 not handed over Brady material she is absolutely moving
9 forward at her own peril. I cannot imagine she would.
10 She indicated to me two moments ago there was no Brady
11 material that has not been handed over. I know counsel
12 for a long period of time and I know her
13 professionalism. I know she knows what Brady material
14 is. If she didn't hand it over I suspect there isn't
15 any. If it comes out down the line there was and the
16 prosecution has not handed it over intentionally and
17 willfully now before the Court then there will be
18 situations that have to be dealt with.

19 I can only assume as an officer of the court
20 that Miss Chu has made a proper representation. We are
21 going to move forward. I understand your concern about
22 Brady material. Miss Chu indicated it doesn't exist.
23 I'm not about to go on a witch-hunt to see if it does.

24 MR. DRANOVE: The people who are not disclosed
25 by name, address or phone number to me who said either I

1 didn't see him push the person, I didn't see a knife, I
2 only saw a punch, those are exculpatory witnesses. But
3 she turns over the exculpatory report without the name
4 of the person so she can tell you disingenuously there
5 is no Brady material, I turned it over I can't do
6 anything with it.

7 THE COURT: I'll stop now. At this point your
8 record has been made. I don't want to get involved in
9 any accusations as to disingenuousity. I'm going to
10 proceed with the assumption that both parties are acting
11 professionally. If it turns out in the future one of
12 the parties is not acting professionally there will be
13 repercussions, serious repercussions. Let's just assume
14 for the purpose of moving forward that everything is
15 being done as it should be done.

16 MR. DRANOVE: Also I'm missing four DD-5
17 reports. I'll take that up with Miss Chu before jury
18 selection starts. Hopefully, we could resolve it.

19 THE COURT: Anything else?

20 MR. DRANOVE: We are ready.

21 THE COURT: Thank you. Call your first
22 witness.

23 MS. CHU: The People call Detective John
24 Darino.

25 THE COURT: Counsel come up for a moment.

1 (Discussion held at the bench, off the
2 record.)

3 DETECTIVE JOHN DARINO, having been first duly
4 sworn, testified as follows:

5 THE COURT: State your name, shield number for
6 the record, spell your last name.

7 THE WITNESS: Detective Darino, D-A-R-I-N-O.

8 THE COURT: Slowly.

9 THE WITNESS: D-A-R-I-N-O. Shield number 186.

10 THE CLERK: Your assignment.

11 THE WITNESS: Investigator.

12 THE COURT: For where?

13 THE WITNESS: 72 Detective Squad.

14 THE COURT: Miss Chu.

15 MS. CHU: I may inquire; right?

16 DIRECT EXAMINATION

17 BY MS. CHU:

18 Q Good morning Detective.

19 A Good morning.

20 Q How long have you been with the New York City
21 Police Department?

22 A Approximately ten years.

23 Q You're currently assigned to the 72 Squad?

24 A That's correct.

25 Q Are you a Detective there?

1 A Yes, I am.

2 Q I just want to direct your attention to February
3 27th of 2005. Were you working on that day?

4 A Yes, I was.

5 Q Did there come a time that day when you became
6 involved --

7 THE COURT: One second. Slowly.

8 Q Did there come a time that day when you became
9 involved in the investigation into the death of Edgar Ojeda?

10 THE COURT: What date are we talking about
11 again?

12 THE WITNESS: February 27th.

13 THE COURT: Of when?

14 THE WITNESS: 2005.

15 Q Did you become involved in the investigation into
16 the death of Edgar Ojeda?

17 A Yes, I did.

18 Q Where did that take place?

19 A Confines of the 72 precinct.

20 Q Do you know the address?

21 A Yes, I do.

22 Q What is it?

23 A 314 39th Street, El Borinquen Bar.

24 Q El Borinquen?

25 A Bar.

1 THE COURT: You're going to have to spell
2 that.

3 THE WITNESS: B-O-R-I-Q-U-E-N.

4 Q N as in Nancy?

5 A Correct.

6 Q How is it that you became involved?

7 A I was assigned the case.

8 Q You were the case Detective?

9 A I was the case Detective.

10 Q About what time was it that you got brought into
11 the case?

12 A It was at approximately 0800 hours.

13 Q That is when you started?

14 A That's correct.

15 Q Now, during the course of your investigation did
16 there come a time when you or your colleagues spoke with
17 witnesses who were present when Mr. Ojeda was killed?

18 A Yes, I did.

19 Q Were any nicknames or names given for the
20 perpetrator?

21 A Yes, there was.

22 Q What were the names or nicknames given?

23 A Kekay.

24 Q Kekay. Based upon that information did you find
25 out who Kekay was?

1 A Yes, I did.

2 Q Who was that?

3 A Enrique Rivera.

4 Q Did you create a photographic array with Enrique
5 Rivera?

6 A Yes, we did.

7 Q When did you do that?

8 A It was on February 27th at approximately 2110
9 hours.

10 THE WITNESS: Can I refresh my memory to look
11 at the notes?

12 THE COURT: Yes.

13 THE WITNESS: It was on February 27th at
14 approximately 2050 hours.

15 Q 2050 hours is when?

16 THE COURT: 2050 hours is what?

17 THE WITNESS: 8:50 p.m.

18 Q Did there come a time when you showed the array to
19 witness number six?

20 A Yes, I did.

21 Q What date and time did you show this array to that
22 witness?

23 A February 27th at 910 hours.

24 Q 9:10 p.m.?

25 A P.m.

1 Q Where did you show this array?

2 A 72 precinct.

3 Q When you showed the array to witness number six did
4 you explain to witness number six what you were going to do?

5 A Yes, I did.

6 Q What did you tell her?

7 A I explained to him there was going to be six
8 individuals, six photographs of individuals and I wanted to
9 see if he recognized anybody in the photographs.

10 Q Anybody with you when you did this array?

11 A Detective Gaynor.

12 Q Once you showed the witness the array did the
13 witness recognize anyone in the array?

14 A Yes, he did.

15 Q What number photograph did the witness recognize?

16 A Number 2.

17 Q Number 2. And whose photograph was in position
18 number 2?

19 A Enrique Rivera.

20 Q Did the witness indicate to you where they
21 recognized the person from?

22 A Yes, he did.

23 Q What did he say?

24 A He said he recognized him as the male he saw
25 punching and swinging his hands at the guy who got stabbed.

1 Q Do you have the array that you showed to witness
2 number six with you today?

3 A Yes, I do.

4 Q Would you please.

5 MS. CHU: Your Honor, if I could have that
6 deemed marked People's 1 for identification.

7 THE COURT: Deem it marked.

8 MS. CHU: Your Honor, just to keep along the
9 lines of witness number one, all the reference numbers,
10 may I use a copy to put into evidence and you can look
11 at the original? The copies are redacted. The original
12 is obviously not.

13 THE COURT: We will deem the copy marked
14 People's 1.

15 MS. CHU: Sorry, I didn't bring a redacted copy
16 with me.

17 THE COURT: Do you have a --

18 MS. CHU: I'm sorry, I didn't bring a redacted
19 copy.

20 THE COURT: Do you have one with you?

21 MS. CHU: No.

22 MR. DRANOVE: Of what?

23 THE COURT: The photo array.

24 Counsel, do you have a copy of the photo
25 array?

1 MR. DRANOVE: I believe I do. I could look
2 through it right now. The prosecutor is a couple steps
3 ahead of me. I'll take a look.

4 THE COURT: We will deem the original marked
5 as People's 1 for identification for purpose of the
6 hearing. Hand me the original. I'll use it. Counsel
7 can review his copy, if he finds it, and then he could
8 show me and I'll compare it with the original and I'll
9 see whether or not --

10 MR. DRANOVE: Judge.

11 THE COURT: Otherwise we will suspend that
12 portion of the hearing until you could have your copy
13 provided.

14 MR. DRANOVE: I'm looking at a copy of an
15 original.

16 THE COURT: Why don't you hand it up.

17 MR. DRANOVE: Name crossed out and number six.

18 THE COURT: Hand it up.

19 (Hanging.)

20 THE COURT: It's a terrible copy. I would hope
21 that your office could do better next time with copies,
22 but it is a copy of the original.

23 The photographs are very dark, hard to make
24 out.

25 Q Detective were any marks made on the array at the

1 time you showed it to witness number six?

2 A Yes, there was.

3 THE COURT: Do you want to move the array into
4 evidence for purpose of the hearing?

5 MS. CHU: Yes. I want to ask him a few
6 foundation questions.

7 MR. DRANOVE: May I see it?

8 THE COURT: Your copy is the same as the copy
9 the officer is looking at.

10 MR. DRANOVE: He has my copy.

11 THE COURT: He has the original. The original
12 is unredacted. I'm not going to hand it over for you to
13 look at.

14 I've looked at both items and they are the
15 same documents except for the redaction.

16 MR. DRANOVE: My copy has two redactions.

17 THE COURT: Except for the redactions.

18 MR. DRANOVE: I didn't hear the plural.

19 THE COURT: I stand corrected. Thank you
20 counsel. Continue.

21 Q Detective, I'm sorry. Did you answer me? Were any
22 notations made on the actual array at the time that the
23 array was shown to the witness?

24 A Yes, there was.

25 Q Who made those?

1 A I did and number six did those notations.

2 Q Is there also a date and time indicated on the
3 array?

4 A Yes, there were.

5 Q The one you have in front of you, is that the
6 actual array you showed to the witness on February 27th,
7 2005?

8 A Yes, it is.

9 MS. CHU: At this time I would offer that into
10 evidence as People's number 1.

11 THE COURT: Counsel.

12 MR. DRANOVE: Your Honor, a request, is it
13 possible someone can put some sticky material over what
14 identifies the individual?

15 MS. CHU: The witness actually has a duplicate
16 copy of the array without signatures.

17 THE WITNESS: Would you like that?

18 THE COURT: Yes. For purpose of the hearing
19 we are going to need the actual signed array as
20 evidence.

21 MS. CHU: I understand that.

22 (Hanging.)

23 THE COURT: Counsel, you can step back.

24 MS. CHU: May I continue, your Honor?

25 THE COURT: Yes. Any objection counsel?

1 MR. DRANOVE: No.

2 THE COURT: Deemed marked People's 1 in
3 evidence for purpose of the hearing.

4 Q Detective, directing your attention to February
5 28th of 2005. Did your office also receive information
6 regarding the whereabouts of Enrique Rivera?

7 A Yes, I did.

8 Q And what information did you get?

9 A That Enrique Rivera was at 172-18 Effington Avenue,
10 Flushing, New York.

11 THE COURT: How do you spell it?

12 THE WITNESS: E-F-F-I-N-G-T-O-N Avenue.

13 A Flushing, New York 11358.

14 Q Based upon that information did you go to that
15 location?

16 A Yes, I did.

17 Q And did you go there with anyone else?

18 A Yes, I did.

19 Q Who did you go with?

20 A Detective Gaynor.

21 Q Detective Gaynor?

22 A Yes.

23 Q Where is he from?

24 A Brooklyn South Homicide Squad.

25 Q About what time did you arrive at that location?

1 A Approximately 0420 hours.

2 Q About 4:20 in the morning?

3 A That's correct.

4 Q Can you just describe for me the location?

5 A Excuse me?

6 Q Can you describe the location?

7 A Sure. It was a private house.

8 Q Private?

9 A Private house detached.

10 Q Did you knock on the door?

11 A Yes, I did.

12 Q Did anyone open the door?

13 A Yes, they did.

14 Q Did this person identify themselves to you?

15 A Yes, she did.

16 Q And what did she tell you her name was?

17 A Patricia Glasgow.

18 Q Did you identify yourself?

19 A Yes, I did.

20 Q What did you say?

21 A I told her I was Detective Darino from the 72

22 Detective Squad, I was conducting an investigation, I wanted
23 to see if Enrique Rivera was there.

24 Q Did Miss Glasgow say anything to you?

25 A Yes, she did.

1 THE COURT: I'm sorry Glasgow or Blasgow?
2 Spell it.

3 THE WITNESS: G-L-A-S-G-O-W.

4 THE COURT: Counsel.

5 Q What did she say?

6 A She told me he is right there on the couch.

7 Q Did you see someone on the couch?

8 A Yes, I did.

9 Q Can you tell me do you see that person here in the
10 courtroom today?

11 A Yes, I do.

12 Q Please point him out and indicate something he is
13 wearing.

14 A Enrique Rivera. He is wearing the suit with the
15 gray tie.

16 THE COURT: Indicating the Defendant.

17 Q Now, did you speak with Enrique Rivera?

18 A Yes, I did.

19 Q What did you tell him?

20 A I told him we are conducting an investigation and I
21 needed him to come outside with us.

22 Q Did you tell him you wanted to bring him back to
23 the 72 precinct?

24 A Yes. I told him he needed to come back to the 72
25 precinct.

1 Q You have to wait for me to finish my question.

2 A Sorry.

3 Q Once he got outside did you handcuff him?

4 A Yes, I did.

5 Q And you then transport him to the precinct?

6 A Yes, I did.

7 Q Once you arrived at the precinct where did you put
8 him?

9 A 72 Detective Squad interview room.

10 Q Where is that located in the precinct?

11 A Second floor in the Detective Squad.

12 Q Was the Defendant handcuffed once you left him in
13 the room or did you take the handcuffs off?

14 A Handcuffs were off of him.

15 Q About what time was it when you arrived back at the
16 precinct?

17 A Approximately 0500 hours.

18 Q About five o'clock in the morning?

19 A Yes.

20 Q I want to direct your attention to about 5:15 in
21 the morning. Did there come a time when you actually spoke
22 with the Defendant?

23 A Yes, I did.

24 Q Did you speak with him in that interview room?

25 A Yes, I did.

1 Q And was anybody else with you when you spoke with
2 him?

3 A Yes.

4 Q Who was with you?

5 A Detective Gaynor.

6 Q Before you speak to the Defendant did you read him
7 his Miranda rights?

8 A Yes, I did.

9 Q How is it you were able to read his Miranda rights
10 to him?

11 A I read it off a sheet of paper.

12 Q Is it a preprinted sheet of paper?

13 A Yes, it is.

14 Q Do you have that sheet of paper with you today?

15 A Yes, I do.

16 MS. CHU: If I could have that deemed marked 2
17 for identification.

18 THE COURT: Deemed marked.

19 Q Were any marks made on the Miranda sheet on
20 February 28th, 2005?

21 A Yes, there were.

22 Q Who made those marks?

23 A Myself, Enrique Rivera and Detective Gaynor.

24 Q They were made when you actually read him his
25 rights?

1 A That's correct.

2 Q That is the actual sheet you read to him?

3 A Correct.

4 MS. CHU: At this time I would offer that into
5 evidence as People's number 2.

6 MR. DRANOVE: May I see that please?

7 THE COURT: Certainly.

8 (Handing.)

9 MR. DRANOVE: Thank you.

10 THE COURT: Any objection counsel?

11 MR. DRANOVE: No.

12 THE COURT: So moved People's 2 in evidence
13 deemed marked.

14 Q Detective Darino, would you please demonstrate the
15 way you advised the Defendant of his rights and include
16 anything that he said to you back.

17 A Yes. You have the right to remain silent and
18 refuse to answer any questions; do you understand?

19 His reply was yes and he placed his initials
20 Enrique Rivera next to it.

21 Anything you say --

22 THE COURT: I'm going to stop you.

23 There are yeses written on that sheet. Who
24 wrote those yeses?

25 THE WITNESS: Enrique Rivera.

1 THE COURT: After you asked the question he
2 would sign yes and then initial it?

3 THE WITNESS: Yes.

4 THE COURT: Continue with your answer.

5 Q Did he do that after each question or all together?

6 A After each question.

7 Q Continue.

8 A Anything you do say may be used against you in a
9 court of law; do you understand?

10 You have the right to consult an attorney before
11 speaking to the police and to have an attorney present
12 during any questioning now and in the future; do you
13 understand?

14 If you cannot afford an attorney one will be
15 provided to you without costs; do you understand?

16 If you do not have an attorney available you have
17 the right to remain silent until you have the opportunity to
18 consult with one; do you understand?

19 Now that I have advised you of your rights are you
20 willing to answer any questions?

21 In Enrique's own handwriting he wrote I understand
22 my rights underneath all the questions.

23 Q On all of the questions did he answer yes to all
24 your questions?

25 A Yes.

1 Q Did he write the word yes after each question?

2 A Yes.

3 Q And he wrote his initials after each yes?

4 A Yes, he did.

5 Q He also signed this piece of paper?

6 A Yes, he did.

7 Q Once he was read his Miranda rights did Enrique
8 Rivera agree to speak to you?

9 A Yes. Yes, he did.

10 Q Could you tell us what sum and substance did he
11 tell you?

12 A He stated he went to the bar on February 27th at
13 night on 39th Street and Third Avenue and he was there
14 having a few drinks when he got into a small confrontation
15 with a guy from the bar. He said it was just -- he said he
16 was getting eye contact from a male and as he went to get a
17 second round of drinks the guy was still looking at him and
18 he looked back at the guy and the guy said to him what's up?
19 And he asked the guy what seems to be the problem? And he
20 said the crowd rose and he felt punching and grabbing so he
21 took out a knife. He said he used it in self-defense,
22 swinging it at the crowd not knowing that he really hurt
23 anyone. He got in his car and went home. He didn't know
24 anyone was hurt and it was self-defense. He didn't mean it.
25 He was just scared. He knew by saying sorry wasn't going to

1 bring the person back, but he didn't really mean things to
2 go down that way and he was very sorry.

3 Q After the Defendant made the statement -- was the
4 statement made in a narrative form just like how you read it
5 or was it more like a question and answer?

6 A It was a question and answer.

7 Q Did you tell him what the investigation was about?

8 A Yes, I did.

9 Q Before he actually spoke to you?

10 A Correct.

11 Q What did you tell him?

12 A I told him we are conducting an investigation of an
13 incident that occurred at El Borinquen Bar on 39th and Third
14 Avenue and then he told me he was in the bar and that is
15 how --

16 Q How the story goes?

17 A Exactly.

18 THE COURT: We are going to stop you one
19 second.

20 What is the name of the bar again?

21 THE WITNESS: El Borinquen.

22 Q Once he gave you this oral statement did you ask
23 him to write it down for you?

24 A Yes, I did.

25 Q Did you provide him with paper and pen?

1 A Yes, I did.

2 Q Did you remain in the room when he actually wrote
3 it out for you?

4 A Yes, I did.

5 Q Do you have the statement that the Defendant wrote
6 for you on February 28th, 2005?

7 A Yes, I do.

8 MS. CHU: At this time if I could have that
9 deemed marked People's 3.

10 THE COURT: Deemed marked.

11 Q Detective, was that written in the Defendant's own
12 hand?

13 A Yes, it is.

14 Q And did he sign it on the bottom?

15 A Yes, he did.

16 Q Did you make any marks on it as well?

17 A Yes, I did.

18 Q When did you make those marks?

19 A Prior to the statement -- on the top of the
20 statement and after the Defendant signed his name.

21 Q You also wrote something on the bottom?

22 A Correct. My name.

23 Q You put your name?

24 A And Detective Gaynor signed his name.

25 Q That was done at the time the statement was made?

1 A Correct.

2 Q That is the actual statement that he wrote out for
3 you?

4 A Yes, it is.

5 MS. CHU: At this time I would offer that into
6 evidence as People's 3.

7 MR. DRANOVE: May I see the original?

8 (Handing.)

9

10 MR. DRANOVE: Thank you.

11 THE COURT: Any objection counsel?

12 MR. DRANOVE: No.

13 THE COURT: So moved People's 3 in evidence
14 deemed marked.

15 May I see that please?

16 (Handing.)

17 MS. CHU: May I continue?

18 THE COURT: Yes. You don't have to read the
19 statement; I just read it.

20 Q Detective, I want to direct your attention to about
21 ten o'clock in the morning on February 28th, 2005. Did
22 there come a time the Defendant spoke with an Assistant
23 District Attorney from the Kings County DA's office?

24 A Yes, he did.

25 Q Was the conversation recorded in any way?

1 A Yes, it was.

2 Q How was it recorded?

3 A On videotape.

4 Q Were you present when this conversation took place?

5 A Yes, I was.

6 Q Did the Assistant District Attorney have any
7 conversations with the Defendant that was not on videotape?

8 A No.

9 Q Do you recall what tape number was assigned to the
10 video?

11 A Yes, I do.

12 Q What was it?

13 A Robert R 05-0027.

14 MS. CHU: At this time, your Honor, I would
15 like this deemed marked People's 4 and open and play it.

16 THE COURT: Counsel.

17 MR. DRANOVE: I see an envelope. I've already
18 seen what was supposed to be a copy of the tape. I have
19 no objection so far.

20 THE COURT: We will deem it marked People's 4
21 and play it.

22 MS. CHU: Want me to do it here or there?

23 MR. DRANOVE: Judge, is there a way I could
24 seat myself and my client a little more reasonably so we
25 can see?

1 THE COURT OFFICER: Can you slide over?

2 THE COURT: It's up to the security of the
3 courtroom.

4 THE COURT OFFICER: Mr. Rivera, you could sit
5 over here please.

6 THE COURT: If you would like to sit in the
7 jury box you can, counsel.

8 MR. DRANOVE: I think it's appropriate for me
9 to sit here.

10 THE COURT: Whatever you want.

11 (Tape played.)

12 (Tape stopped.)

13 THE COURT: Let the record reflect we just
14 viewed the tape.

15 Q Was that a fair and accurate recording of the
16 entire conversation had between Assistant District
17 Attorney Sipress and the Defendant Enrique Rivera on
18 February 28th, 2005?

19 A Yes, there was.

20 Q Were there any additions or deletions from the
21 tape?

22 A No.

23 MS. CHU: At this time I would offer into
24 evidence as People's 4.

25 MR. DRANOVE: No objection.

1 THE COURT: So moved People's 4 in evidence
2 for purpose of the hearing deemed marked.

3 Q I direct your attention Detective to about four
4 p.m. on the same day, February 28th of 2005. Did there
5 come a time when you prepared to conduct lineups in this
6 case?

7 A Yes, I did.

8 Q And who was going to be the subject of the lineups?

9 A Mr. Enrique Rivera.

10 Q Did you contact any witnesses to come to view the
11 lineup at the precinct?

12 A Yes, I did.

13 Q Using the numbers that we were using before, can
14 you just tell me how many people did you try and contact to
15 view the lineup?

16 A Six.

17 Q Six people. What did you tell them when you
18 contacted them?

19 A I informed that I needed them to come to the 72
20 precinct to view a lineup.

21 Q How did they come to the precinct if you recall?

22 A Number five and six was picked up and taken back to
23 the 72 precinct. One, two, three and four came on their
24 own.

25 Q Once they all were at the precinct where did you

1 put them?

2 A In separate rooms.

3 Q Where was the Defendant when these witnesses
4 arrived at the precinct?

5 A In the interview room.

6 Q The separate rooms you put the six witnesses in,
7 where is that in relation to where the Defendant was being
8 held?

9 A Feet wise?

10 Q I'm sorry, let me withdraw that. The room that the
11 Defendant was in is there a door to that room?

12 A Yes, there is.

13 Q Was the door opened or closed?

14 A Closed.

15 Q Is there a window on the door at all?

16 A Yes.

17 Q Is there a covering on the window or can you see
18 out?

19 A There is a covering on the window.

20 Q There is only one door to that room?

21 A Correct.

22 Q From the rooms that you put all the other six
23 witnesses in can you see into that interview room at all?

24 A No.

25 THE COURT: Is the interview room the same

1 room that the subject to the lineup was going to be viewed?

2 THE WITNESS: That's correct.

3 THE COURT: It's the viewing room and
4 interview room.

5 Q Once the witnesses were at the precinct did you
6 give them any instructions regarding not wandering
7 around the precinct, etc.?

8 A Yes.

9 Q What did you tell them?

10 A I told them to stay in the room they were in until
11 we conducted the lineup.

12 Q Were each of the witnesses placed in different
13 rooms or were any of them together?

14 A Number five and six were together.

15 Q Did there come a time when you actually went to go
16 get fillers for this?

17 A Yes, there was.

18 Q Where did you get the fillers from?

19 A Two fillers were from the neighborhood. Three were
20 police officers.

21 Q Did you already prearrange for the officers to
22 participate in the lineup before the witnesses got to the
23 precinct?

24 A Yes, I did.

25 Q And did you ask them to remain in an area where

1 they would not be seen in the precinct?

2 A Yes, I did.

3 Q Where did you ask them to remain?

4 A In the police locker room.

5 Q Where is that?

6 A Basement of the precinct.

7 Q Once the fillers were brought back to the
8 precinct --

9 You said there were two fillers that were brought
10 from the neighborhood

11 A Yes.

12 Q Where were they placed?

13 A In the interview room.

14 Q Where the Defendant was?

15 A Correct.

16 Q What was done with the three officers that were
17 down in the basement?

18 A Then they were brought up into the interview room.

19 Q When the fillers are brought into the interview
20 room and when the three officers were brought into the
21 interview room where the Defendant was did they have to pass
22 at all the areas where the witnesses were being held?

23 A No.

24 Q Once they were all in the interview room did you
25 offer the Defendant the position that he wanted to sit in?

1 A Yes, I did.

2 Q What position did he select?

3 A He selected position number 4.

4 Q What did you do with the other numbers?

5 A I handed out the numbers to other positions.

6 Q Random --

7 A Randomly.

8 Q Did you take any photographs of this lineup once
9 they were situated in their positions with their numbers?

10 A Yes, I did.

11 Q Do you have those photographs with you today?

12 A Yes, I do.

13 MS. CHU: At this time, your Honor, if I could
14 have that deemed marked People's 5 collectively.

15 THE COURT: Counsel. I'm sorry. Deemed
16 marked.

17 Q Detective, who took those photographs?

18 A One of the detectives that was assisting me.

19 Q How were the photographs taken?

20 A With a Polaroid camera.

21 Q Were they taken of all six together or separate?

22 A Three and three.

23 Q To first three?

24 A First three and last three.

25 Q Do those photographs fairly and accurately depict

1 how the lineup appeared before they began?

2 A Yes, they do.

3 MS. CHU: At this time, your Honor, I would
4 offer them into evidence as People's 5.

5 MR. DRANOVE: May I examine them?

6 THE COURT: Certainly.

7 (Handing.)

8

9 MR. DRANOVE: Thank you.

10 THE COURT: Counsel.

11 MR. DRANOVE: Are they being numbered as 5A and
12 5B? I have no objection.

13 THE COURT: We will deem them marked 5A and
14 5B.

15 1 through 3 would be A and 4 through 6 will be
16 B. Any objection counsel?

17 MR. DRANOVE: No.

18 THE COURT: So moved People's 5A and B in
19 evidence.

20 Q Once the lineup was set up which number witness did
21 you get first to view the lineup?

22 A Number one.

23 Q What did you tell number one before you brought
24 them in to look at the lineup?

25 A Explained that he was going to view a lineup, there

1 would be six individuals in the room and if he recognized
2 anybody I wanted him to let me know.

3 Q What number?

4 A What number did he choose?

5 Q You asked him if they recognized anybody tell you
6 which number?

7 A Correct.

8 Q Did you ask them to tell you anything else they
9 recognized?

10 A And where did they recognize that individual from.

11 Q Number one went first?

12 A Yes.

13 Q About what time did number one view the lineup?

14 A Approximately 4:18 p.m.

15 Q Did witness number one identify anybody in the
16 lineup?

17 A Yes, he did.

18 Q Who did he identify?

19 A Position number 4, Enrique Rivera.

20 Q What did this witness tell you where he recognized
21 position number 4 from?

22 A He said he recognized him from the El Borinquen
23 Bar. He said that is the guy who stabbed the victim.

24 Q Where did witness number one go next?

25 A He exited through the side door.

1 Q Who was gotten next, which number?

2 A Witness number two.

3 Q Witness number two, about what time did they view
4 the lineup?

5 A At 4:20 p.m.

6 Q Did you say the same thing to witness number two?

7 A Yes, I did.

8 Q Did witness number two identify anybody in the
9 lineup?

10 A Yes, he did.

11 Q Who did he identify?

12 A Position number 4.

13 Q Which was?

14 A Enrique Rivera.

15 Q Did they tell you where they recognized Enrique
16 Rivera from?

17 A Yes, he did.

18 Q From where?

19 A He said from the El Borinquen Bar. He said that is
20 the guy who punched the kid.

21 Q Where was witness number two placed?

22 A Witness number two exited through the side door.

23 Q Same place that witness number one just left from?

24 MR. DRANOVE: Your Honor, could I have read
25 back the question and answer preceding the current

1 question and answer?

2 (Whereupon, the Reporter read back as
3 requested.)

4 Q I believe we just completed witness number two?

5 A Correct.

6 Q Who was gotten next?

7 A Witness number three.

8 Q Did you say the same questions that you stated to
9 us earlier regarding if he recognized anybody?

10 A Yes, I did.

11 Q Did witness number three identify anybody in the
12 lineup?

13 A Yes, he did.

14 Q Who did they identify?

15 A Position number 4.

16 Q Who was in position number 4?

17 A Enrique Rivera.

18 Q Did they tell you where they recognized Enrique
19 Rivera from?

20 A Yes, he did.

21 Q From where?

22 A He said in the El Borinquen Bar. He stated that's
23 the stabber.

24 Q Where was witness number three placed?

25 A He exited through the side door.

1 Q Where one and two also exited from?

2 A That is correct.

3 Q Was witness number four next?

4 A Yes, he was.

5 Q And can you tell me witness number four did they
6 recognize anyone in the lineup?

7 A No, he didn't. He did not.

8 Q They did not?

9 A No.

10 Q Where was witness number four placed?

11 A He exited through the side door.

12 Q Was witness number five next?

13 A Yes, she was -- yes, they were.

14 Q And did witness number five identify anybody in the
15 lineup?

16 A Yes, they did.

17 Q And what number did they recognize?

18 A Position four.

19 Q Did they tell you where they recognized the
20 Defendant from?

21 A Yes, they did.

22 Q I'm sorry, who was in position number 4?

23 A Enrique Rivera.

24 Q Where did they recognize Enrique Rivera?

25 A From El Borinquen Bar. They stated that's Enrique.

1 Q Where was witness number five taken?

2 A To view the lineup.

3 Q Where is number five who just viewed the lineup?

4 A Exited through the side door.

5 Q Six, were they next?

6 A Yes.

7 Q Did they get brought in to view the lineup?

8 A Yes.

9 Q Did they recognize anyone in the lineup?

10 A Yes.

11 Q Who?

12 A Position number 4.

13 Q Who was in position number 4?

14 A Enrique Rivera.

15 Q Did they tell you where they recognized Enrique
16 Rivera from?

17 A Yes, they did.

18 Q From where?

19 A Said that's the guy swinging his arm and punching
20 the victim.

21 Q Where was witness number six taken after that?

22 A He exited through the side door.

23 Q Once each witness was done were they able to
24 converse at all with any of the other witnesses who had not
25 viewed the lineup yet?

1 A No.

2 Q Was the Defendant given an opportunity to change
3 his position after each lineup was conducted?

4 A Yes, he was.

5 Q Did he opt to change his position?

6 A No, he did not.

7 Q He remained in position number 4 for all six
8 lineups?

9 A That's correct.

10 Q Did the Defendant have any opportunity to eat,
11 drink or use the facilities while he was in your custody?

12 A Yes, he did.

13 Q What?

14 A He ate egg and cheese on a roll and coffee. He had
15 three slices of pizza and a bottle of Sprite. He had water
16 and coffee throughout the course of the day and an
17 opportunity to use the restroom.

18 Q Once the lineups were completed did you place the
19 Defendant under arrest at this time?

20 A Yes, I did.

21 MS. CHU: Thank you very much. I have nothing
22 further.

23 THE COURT: Counsel.

24 MR. DRANOVE: May I have a brief recess, your
25 Honor? I'll be finished before the lunch hour for sure.

1 Five minutes.

2 THE COURT: Five minutes.

3 MR. DRANOVE: Thank you.

4 (Witness excused.)

5 (Short recess taken.)

6 (Witness resumes the witness stand.)

7 THE CLERK: Let the record reflect the
8 Defendant is present with counsel, Assistant District
9 Attorney present. You're reminded you're under oath.

10 THE COURT: Counsel.

11

12

13 CROSS-EXAMINATION

14 BY MR. DRANOVE:

15 Q Detective, did you make any notes with respect to
16 whether the individuals identified as numbers one
17 through six identified anybody in the photo array that
18 you showed them?

19 A Excuse me? Can you rephrase that? Can you
20 rephrase that question?

21 Q Did witness number one identify a photo?

22 A No.

23 THE COURT: Who did you show the photo array
24 to?

25 THE WITNESS: Number six.

1 THE COURT: Any of the other witnesses that
2 viewed the lineup?

3 THE WITNESS: No.

4 Q Why not?

5 A Because once I did it with number six I believed
6 that was appropriate.

7 THE COURT: Counsel please just pick a spot.
8 Either stand over there or there.

9 MR. DRANOVE: I've been sitting a long time.

10 THE COURT: Or you could use the podium here.
11 You could stand over by the edge of the jury box or
12 stand where you are.

13 Q Were you present throughout the interview that was
14 videotaped and shown to us?

15 A Yes, I was.

16 Q Did you at any time hear Mr. Enrique Rivera say yes
17 in response to the question now that I've advised you of
18 your rights are you willing to answer my questions?

19 A On the video?

20 Q When you were there did you hear him say yes to
21 that question?

22 A Well, on the video you're saying; correct?

23 Q All right. On the video did you hear him say it on
24 the video?

25 A I believe he said yeah.

1 THE COURT: Stop for the record.

2 I just saw the video. He nodded his head at
3 first and someone, not the interviewer, said you have to
4 answer the question and that is when he said yes.

5 MR. DRANOVE: Different question and answer.
6 I've seen the video several times. Unfortunately, it's
7 been removed from the room as if it's not relevant to
8 the Court's examination.

9 May I show the video to the witness?

10 THE COURT: Stop. Move on.

11 MR. DRANOVE: I have a clear recollection that
12 the witness did not say yes to that question.

13 THE COURT: Please pick a spot.

14 MR. DRANOVE: I'll stand right here.

15 THE COURT: No. Back further. I gave you
16 three choices. Pick a spot. It's good we do this now
17 so when we are doing this during the trial we won't have
18 to do this. It's one of my pet peeves. I apologize
19 with that. I have real problems with attorneys
20 wandering around the courtroom when they are questioning
21 the witness.

22 MR. DRANOVE: Whatever your recollection or my
23 recollection, the tape speaks for itself.

24 THE COURT: Absolutely.

25 MR. DRANOVE: My recollection is "we here", not

1 yes. I ask your Honor to decide whether my client
2 answered in the affirmative the question, now I've
3 advised you of your rights are you willing to answer my
4 questions? If you listen again it's "we here".

5 THE COURT: We here?

6 MR. DRANOVE: Yes, we here.

7 THE COURT: Whether it was we here or yes it
8 was clearly an acknowledgment. There was an up and down
9 shaking of the head to the question. That is clearly my
10 recollection. In any event, you can move on.

11 MR. DRANOVE: I have no further questions.

12 THE COURT: Any redirect?

13 MS. CHU: No.

14 THE COURT: You're excused.

15 (Witness excused.)

16 THE COURT: Let's play the beginning of the
17 video one more time. Let the record reflect I'm
18 reviewing the beginning portion of the video again.

19 MR. DRANOVE: Can we all see it?

20 THE COURT: Yes. We are all going to view it
21 right now.

22 MR. DRANOVE: I thought you were going to look
23 at it on the computer.

24 THE COURT: I don't know if I could.

25 (Tape played.)

1 (Tape stopped.)

2 THE COURT: Let the record reflect that I did
3 view the first portion of the video again where the
4 Defendant was read his rights. The tape speaks for
5 itself. Record should reflect counsel was absolutely
6 correct that the Defendant indicated his acquiescence.
7 What the Court viewed his acquiescence to the proceeding
8 by saying "we here". In any event, we will proceed.
9 Counsel was correct.

10 Call your next witness Miss Chu.

11 MS. CHU: People call Detective James Gaynor.

12 DETECTIVE JAMES GAYNOR, having been first duly
13 sworn, testified as follows:

14 THE CLERK: In a loud clear voice give us your
15 name, shield and command.

16 THE WITNESS: Detective James Gaynor. Shield
17 1000. Brooklyn South Homicide Squad.

18 THE CLERK: Spell your name.

19 THE WITNESS: G-A-Y-N-O-R.

20 THE COURT: Counsel.

21 DIRECT EXAMINATION

22 BY MS. CHU:

23 Q Detective, how long have you been a member of the
24 New York City Police Department?

25 A Twenty years.

1 Q I want to direct your attention to February 27th of
2 2005. Were you working on that day?

3 A Yes, I was.

4 Q Did there come a time when you became involved in
5 the investigation into the death of Edgar Ojeda?

6 A Yes, I did.

7 Q During the course of your investigation did there
8 come a time when you were looking to speak with someone in
9 particular?

10 A Yes.

11 Q Who was that?

12 A Enrique Rivera.

13 Q Did you have any information on Enrique Rivera
14 regarding his family members or where they lived?

15 A Yes.

16 Q And I want to direct your attention now to February
17 28th of 2005 at about one o'clock in the morning. Did you
18 find yourself at 30 Bush Street here in Brooklyn?

19 A Yes, I did.

20 Q What location is 30 Bush Street?

21 A That was the residence of Enrique Rivera's mother.

22 Q Did you knock on the door?

23 A Yes, I did.

24 Q And did anyone answer the door?

25 A Yes, she answered the door.

1 Q His mother?

2 A Yes.

3 Q What was her name?

4 A Anna Casallas.

5 Q Were you with anyone when you went to the location?

6 A I was with Detective Darino from the 72 Squad.

7 Q Once you were there did Miss Casallas, did she
8 speak English at all?

9 A Very little.

10 Q Did you tell her why you were there?

11 A I told her I was investigating a crime. I didn't
12 tell her exactly why I was there, no.

13 Q Did she seem to be able to understand what you were
14 telling her?

15 A Not all that.

16 MR. DRANOVE: Objection.

17 A Not all that well, no.

18 MR. DRANOVE: I withdraw.

19 Q Could you tell what language she spoke?

20 A Spanish.

21 Q What did you do?

22 A I went to the location in an attempt to locate
23 Enrique Rivera. I was unable to converse with her, speak
24 with her. I contacted Detective Rivera to translate for me.

25 Q While you were at the location did you actually go

1 inside the apartment?

2 A Yes, I did.

3 Q Which apartment was that?

4 A Can I look at my notes to refresh my memory?

5 THE COURT: Go ahead.

6 A Apartment 1D.

7 Q 1D?

8 A Yes.

9 Q While you were inside apartment 1D did you observe
10 anything?

11 A Yes, I did.

12 Q What did you observe?

13 A In the rear bedroom I observed a camouflage jacket,
14 green like army type hat and a brown sweatshirt on the
15 floor.

16 Q Did you try and have any conversations with the
17 Defendant's mother with Enrique Rivera's mother regarding
18 the clothing you saw on the floor?

19 A Yes, I did.

20 Q Were you able to communicate with her at all?

21 A Very little.

22 Q Pursuant to your investigation into the case did
23 you have any information regarding what the perpetrators
24 were wearing who were involved in the crime regarding Edgar
25 Ojeda?

1 A Yes.

2 Q What information did you have?

3 A It was similar clothing, camouflage jacket and
4 green army hat.

5 Q You said you contacted Detective Rivera from the 72
6 precinct?

7 A Yes.

8 Q Why?

9 A So he could translate and tell her mother what we
10 wanted to do with the clothing.

11 Q Did you use your cell phone?

12 A No. I used my cell phone to his cell phone.

13 Q Did you get in touch with Detective Rivera?

14 A Yes.

15 Q Once you spoke with him what did you tell him?

16 A We had clothes here that fit the description of the
17 clothing worn by the perpetrator in this case, that we
18 wanted to take them, I wanted him to ask the mother if it
19 would be all right to take them.

20 Q Did you tell him any information about trying to
21 locate Enrique Rivera at that point?

22 A Yes. We were also asking her if she knew where her
23 son was through Detective Rivera.

24 Q Did you then give the phone over to Miss Casallas?

25 A Yes, I did.

1 Q Did she proceed to have a conversation on your
2 telephone?

3 A Yes, she did.

4 Q What language was she speaking?

5 A Spanish.

6 Q After she had this conversation with Detective
7 Rivera on your telephone was the phone given back to you?

8 A Yes, it was.

9 Q Did you speak to Detective Rivera?

10 A Yes, I did.

11 Q What did he tell you?

12 A She said it would be all right if we took the
13 clothes.

14 Q Did she tell you whose clothing they were?

15 A She said it was her son Enrique's and he more than
16 likely left them there at eight p.m. when he came because
17 when he was there earlier in the day she didn't see the
18 clothing on the floor.

19 Q At that point you then took the clothing?

20 A Yes.

21 Q Did she give you any information about that she
22 will contact you if she saw Enrique?

23 A Yes. She said she would contact us if she saw him
24 in the future.

25 Q What did you do with the clothing after you left

1 the apartment?

2 A It was taken back to the precinct and vouchered.

3 MS. CHU: Thank you very much. I have nothing
4 further.

5 THE COURT: Counsel.

6 CROSS-EXAMINATION

7 BY MR. DRANOVE:

8 Q Detective, what type of building is 30 Bush Street?

9 A It's a project, an apartment building.

10 Q How did you get from the street into the inside of
11 the building?

12 A There is a hallway door. I don't even know if it
13 was locked or not.

14 Q Do you recall if it was locked?

15 A I don't know if it was locked or if we were allowed
16 in, I'm not sure.

17 Q Did you have a search warrant with you?

18 A No, I didn't.

19 Q Arrest warrant?

20 A No.

21 Q At the time you went to the apartment had you
22 already called Officer Rivera?

23 A I'm sorry, I don't understand the question.

24 Q This police gentleman named Rivera, what is his
25 rank?

1 A Detective.

2 Q Was he a Detective then?

3 A Yes.

4 Q When did you call Detective Rivera?

5 A I called him while I was inside the apartment.

6 Q Is that the first time you called him on this run?

7 A I was in contact with him at different times
8 throughout the day regarding the whole case. He was working
9 the case with us.

10 Q You went to the apartment before you called
11 Detective Rivera?

12 A Correct.

13 MS. CHU: Objection.

14 THE COURT: Overruled. He just answered the
15 question yes.

16 Did you go to the apartment before you called
17 Officer Rivera?

18 THE WITNESS: Regarding the conversation I had
19 with the mother, but I had spoken with him a few times
20 during the course of the day.

21 Q What was your purpose in entering the apartment?

22 A In an attempt to locate Enrique Rivera.

23 Q Did you see him in the apartment?

24 A No.

25 Q You mentioned a brown sweatshirt?

1 A Yes.

2 Q Did you take that with you?

3 A Yes.

4 THE COURT: Who let you in the apartment?

5 THE WITNESS: The mother.

6 THE COURT: What did you say to her when you
7 got there?

8 THE WITNESS: I said we were looking to speak
9 to her son. She said he wasn't here.

10 THE COURT: Did she understand you?

11 THE WITNESS: She understands. Her husband
12 was also there. I think he speaks a little better
13 English than she did.

14 THE COURT: You asked if you could go in the
15 apartment?

16 THE WITNESS: Yes.

17 THE COURT: Did she understand?

18 THE WITNESS: I believe she did. She allowed
19 us.

20 THE COURT: She gave you permission to enter
21 the apartment?

22 THE WITNESS: Yes.

23 Q Did she say in English you have permission to enter
24 the apartment?

25 A No.

1 Q Did she say in Spanish anything that you
2 understood?

3 A Anything in Spanish that I understood? No.

4 Q Did you talk to the husband?

5 A I did, yes.

6 Q Do you recall his name?

7 A No, I don't.

8 Q What does he look like?

9 A He is five foot four, rather stocky.

10 Q Did you speak to him?

11 A Yes, I did.

12 Q In English?

13 A Yes.

14 Q What did you tell him?

15 A I told him that we were looking to speak to his
16 son.

17 Q Did he tell you his son wasn't there?

18 A Yes.

19 THE COURT: I'm going to stop you. You
20 indicated the mother gave you permission to enter the
21 apartment. How was that conveyed to you if not in
22 English?

23 THE WITNESS: I don't remember if it was
24 conveyed directly through her or the father, but they
25 allowed us to come in.

1 I said would it be all right for us to come
2 in? I believe the father said you could come in.

3 THE COURT: You were specifically invited in
4 by one of the parties or both?

5 THE WITNESS: One of the parties. I'm not
6 certain which one.

7 THE COURT: Did the other party indicate to
8 you you shouldn't come in?

9 THE WITNESS: No.

10 THE COURT: They didn't want you to come in?

11 THE WITNESS: No. She was extremely
12 cooperative.

13 Q Were you accompanied by anybody in addition to the
14 other Detective, Detective Darino?

15 A There was another Detective. I think it may be
16 Detective O'Brien, I'm not certain. There was another
17 Detective from homicide, maybe O'Brien.

18 Q Did you knock on the door or ring a bell to the
19 apartment?

20 A No. We went inside and knocked.

21 Q On the door to the apartment?

22 A Yes.

23 Q Were all three of the detectives arranged within
24 ten feet of the door when one of you knocked on the door?

25 A Yeah. We were right by the front door. We might

1 have had somebody in the back that also might have been
2 there.

3 Q There may have been more than three?

4 A May have been more than three.

5 Q Back of what?

6 A Back of the building where the exit would have
7 been, the rear windows may have been in case he was there
8 and somebody came out.

9 Q Was that done pursuant to an agreement as to how
10 you would look for Mr. Rivera at that location?

11 A I don't understand the question.

12 Q You said there may have been someone in the back?

13 A Yes.

14 THE COURT: Was that specific employment?

15 THE WITNESS: Yes, we would do that on any
16 case.

17 Q There were at least four law enforcement officers
18 on this run?

19 A Yes.

20 Q Any more?

21 A I don't believe so. There were other locations we
22 were looking to find him at.

23 Q Do you recall who opened the door?

24 A I'm rather certain it was the mother.

25 Q Did you then walk in and start talking to her?

1 A We talked to her in the door for a moment. After
2 we were invited in we went to -- there is a table, a kitchen
3 area when you first get in.

4 Q Anybody you were with of the Detectives with you
5 speak and understand Spanish as far as you know?

6 A I don't believe Detective O'Brien or Darino, no.

7 MR. DRANOVE: No further questions.

8 THE COURT: Counsel.

9 MS. CHU: No questions.

10 THE COURT: You're excused. Thank you.

11 (Witness excused.)

12 THE COURT: Call your next witness.

13 MS. CHU: We call Detective Hector Rivera.

14 DETECTIVE HECTOR RIVERA, having been first
15 duly sworn, testified as follows:

16 THE COURT: State your name, spell it, give
17 your shield number and command.

18 THE WITNESS: Hector Rivera, R-I-V-E-R-A.
19 Shield 4926, 72 squad.

20 THE COURT: Continue counsel.

21 MS. CHU: Thank you.

22 DIRECT EXAMINATION

23 BY MS. CHU:

24 Q Good afternoon Detective.

25 A Good afternoon.

1 Q How long have you been employed by the New York
2 City Police Department?

3 A Nineteen years.

4 Q You're currently assigned to the 72 precinct?

5 A Excuse me.

6 Q The 72 precinct?

7 A Yes.

8 Q I want to direct your attention to February 27th of
9 2005. Did there come a time when you became involved in the
10 investigation into the death of Edgar Ojeda?

11 A Yes, I did.

12 Q Now I want to direct your attention to the
13 following day, February 28th of 2005 at about one o'clock in
14 the morning. Did there come a time when you were contacted
15 by Detective Gaynor from Brooklyn South Homicide?

16 A Yes.

17 Q And can you tell the Court where were you at that
18 time when you got contacted?

19 A I think I was in another apartment somewhere on
20 12th Street near the barber shop.

21 Q How did Detective Gaynor get in touch with you?

22 A By the cell phone.

23 Q Did Detective Gaynor tell you what he wanted from
24 you?

25 A Yes.

1 Q What did he tell you?

2 A He stated to me he needed me to translate because
3 he was speaking to Enrique Rivera's mother and she couldn't
4 understand too well.

5 Q Did he tell you what he wanted to inquire of her?

6 A Yes.

7 Q What did he tell you?

8 A He stated to me that he needed -- there was some
9 clothing in there and he needed me to explain to her that
10 the clothing that was in there he wanted permission to take
11 the clothing.

12 Q Did he also give you any indication to relay to her
13 information regarding Enrique Rivera's whereabouts?

14 A Yes.

15 Q Once he told you all this stuff -- you are fluent
16 in Spanish?

17 A Yes, I am.

18 Q Did you get on the phone with a woman after you
19 spoke with Detective Gaynor?

20 A Yes.

21 Q Did you identify yourself to this person?

22 A Yes.

23 Q What did you say?

24 A I stated to her my name is Detective Rivera and I
25 basically stated we are conducting an investigation in

1 regards to her son and the Detective wanted to know that the
2 clothing that was there that was left by him if she would
3 give permission for him to take the clothing.

4 Q What did the mother tell you?

5 A She stated that her son had came earlier and
6 dropped off, I think she mentioned a baby, and he also might
7 have left those clothes.

8 Q Did she say about what time he had stopped by the
9 apartment?

10 A I think she said about eight o'clock.

11 Q Did she give any indication as to whether or not
12 the Defendant lived with her?

13 A That he comes and goes, he doesn't live there.

14 Q It was eight o'clock he went there, dropped off the
15 child and left the clothing?

16 A Yes.

17 Q Did she identify the clothing as being her son's?

18 A She stated those clothing weren't there before her
19 son got there and when he left the clothing was there.

20 Q Did she indicate to you anything regarding whether
21 or not Detective Gaynor could take the clothing?

22 A Yes.

23 Q What did she say?

24 A Yes.

25 Q That he could take the clothing?

1 A Yes.

2 Q How did she sound to you; was she cooperative or
3 uncooperative?

4 MR. DRANOVE: Objection.

5 THE COURT: Rephrase the question.

6 Q Can you describe how she sounded on the phone?

7 A Okay. She was a little concerned about her son,
8 wanted to know what was going on, but she was very
9 cooperative.

10 Q Did you ask her any information regarding her son's
11 whereabouts?

12 A Yes.

13 Q Did she have any information?

14 A She said no. She said she didn't know where he was
15 at, but if she had contact with him she would call.

16 Q Once you got off the phone with her did you speak
17 with Detective Gaynor again?

18 A Yes.

19 Q Did you inform him what she had told you?

20 A Yes.

21 Q Other than what you just described did you have any
22 further involvement?

23 A No.

24 MS. CHU: Thank you very much. I have nothing
25 further.

1 THE COURT: Counsel.

2 CROSS-EXAMINATION

3 BY MR. DRANOVE:

4 Q Detective, did you speak to anyone else who was, as
5 you understood it, inside the apartment and related to
6 the lady you spoke to?

7 A I don't understand the question.

8 THE COURT: Did you speak to anybody else in
9 the apartment except for the lady that you spoke to?

10 THE WITNESS: No.

11 MR. DRANOVE: No further questions.

12 THE COURT: Any redirect?

13 MS. CHU: No.

14 THE COURT: You're excused. Thank you
15 Detective.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 THE COURT: Miss Chu, call your next witness.

19 MS. CHU: People have no further witnesses.

20 People rest.

21 MR. DRANOVE: I need an interpreter for my
22 witness.

23 THE COURT: What language?

24 MR. DRANOVE: Spanish. May I step outside?

25 THE COURT: Sure. We will get the interpreter

1 right now.

2 (A recess is taken.)

3 THE CLERK: Mr. Rivera is present with
4 counsel. Assistant District Attorney present.

5 THE COURT: Call your witness please.

6 MR. DRANOVE: I call Anna Casallas.

7 (Whereupon, the Official Spanish Interpreter
8 interpreted from English to Spanish and Spanish to
9 English.)

10 MR. DRANOVE: Can you tell Anna when she walks
11 up there to sit in the chair up there.

12 ANNA CASALLAS, having been first duly sworn,
13 testified as follows:

14 THE CLERK: If you'll give us your name and
15 county of residence please.

16 THE WITNESS: Anna Casallas, Brooklyn.

17 THE CLERK: Spell your last name.

18 THE WITNESS: C-A-S-A-L-L-A-S.

19 THE COURT: Counsel.

20 DIRECT EXAMINATION

21 BY MR. DRANOVE:

22 Q Good afternoon Mrs. Casallas.

23 A Good afternoon.

24 Q I'm going to ask you some questions and request you
25 answer them. If you don't understand the question --

1 THE COURT: She has to speak. She can't just
2 nod her head.

3 THE WITNESS: Okay.

4 Q Can you hear me clearly?

5 A Yes.

6 Q Is Enrique Rivera who is sitting in the courtroom
7 over there one of your children?

8 A Yes.

9 Q Do you remember an unusual event at your apartment
10 in late February of 2005?

11 A Yes.

12 Q Did there come a time when you heard knocking on
13 the door?

14 A Yes.

15 Q Where were you when you heard that?

16 A In the living room.

17 Q What did you do when you heard that knocking?

18 A I went to the door and I saw some tall man standing
19 there and I was kind of afraid. I went back and told my
20 husband.

21 Q What language did you speak to your husband?

22 A Spanish.

23 Q What happened next?

24 A I opened the door.

25 Q What happened when you opened the door?

1 A They came in.

2 Q Did they speak to you before they came in?

3 A No.

4 Q Please describe their actions as they came in.

5 A When I opened the door they came in. One stayed in
6 the kitchen, one in the living room and the other went to
7 look around the house.

8 Q When they came in did they speak to your husband?

9 A Yes, they spoke to him, but in English and my
10 husband did not understand. He speak a little English.

11 MR. DRANOVE: No further questions.

12 THE COURT: Did the People who came into the
13 house identify themselves as police officers?

14 THE WITNESS: No.

15 THE COURT: How long have you been in America?

16 THE WITNESS: About twenty years.

17 THE COURT: Counsel.

18

19 CROSS-EXAMINATION

20 BY MS. CHU:

21 Q Good afternoon Miss Casallas.

22 A Good afternoon.

23 Q We have never spoken; right?

24 A No.

25 Q What do you do for a living?

1 A I baby-sit children.

2 Q You baby-sit children?

3 A Yes.

4 Q Can you speak any English?

5 A A little bit.

6 Q Now you're saying when these large men came to the
7 door you said that they did not identify themselves as
8 police officers to you?

9 A No.

10 Q Do you remember being on the telephone with
11 anybody?

12 A No.

13 Q Nobody gave you a cell phone to talk to anybody in
14 Spanish with?

15 A One of them, but that was after they look through
16 the house.

17 Q So you did speak to someone on the telephone?

18 THE COURT: Did you speak to someone on the
19 telephone or not?

20 THE WITNESS: They --

21 THE COURT: The question is did you speak to
22 someone on the telephone or not?

23 THE WITNESS: Yes.

24 THE COURT: Si or no?

25 THE WITNESS: Yes.

1 Q You spoke to this person in Spanish; correct?

2 A Yes because he was Hispanic.

3 Q Isn't it a fact that that person identified
4 themselves to you as being a police officer; isn't that
5 correct?

6 A No.

7 Q Well, didn't I hear you say policia when you were
8 speaking to the interpreter when you were on the phone?

9 MR. DRANOVE: I object to the prosecutor making
10 herself as a witness or that she be called as a witness.

11 THE COURT: I heard her say policia too.

12 In any event, ask the question again.

13 Q Miss Casallas, when you were just speaking with the
14 interpreter did you use the word policia?

15 MR. DRANOVE: Your Honor.

16 THE COURT: Counsel, is that an objection?

17 MR. DRANOVE: It's an objection.

18 THE COURT: Overruled. Did you use that word?

19 THE WITNESS: They told me they was going to
20 put someone in Spanish, but didn't say it was a police
21 officer.

22 THE COURT: Stop. Who did you say came into
23 the apartment?

24 THE WITNESS: Detectives.

25 THE COURT: Don't you think Detectives work for

1 the police?

2 THE WITNESS: Yes.

3 THE COURT: So you knew they were police
4 officers when they came into your apartment?

5 MR. DRANOVE: Objection. There is no
6 testimony.

7 THE COURT: Counsel, I'm asking the question.
8 Stop.

9 MR. DRANOVE: I object.

10 THE COURT: Your objection is noted.

11 Did you think they were police officers when
12 they came into your apartment?

13 THE WITNESS: I thought something happened to
14 my son, that is why I opened the door.

15 THE COURT: When the people came into the
16 apartment did you know they were police officers?

17 THE WITNESS: The one that came in and looked
18 through the apartment, yes.

19 THE COURT: So you knew they were police
20 officers?

21 THE WITNESS: Yes.

22 MR. DRANOVE: Let her finish her answer please.

23 THE COURT: She said yes.

24 MR. DRANOVE: You interrupted her answer. She
25 already said when she was searching the apartment I knew

1 they were police.

2 THE COURT: I'm the trier of facts in this
3 area. I want to get to the bottom of it.

4 If you have an objection note your objection.
5 You'll have an opportunity to give me an oral argument
6 at the end. You'll have an opportunity to redirect this
7 witness. At this moment I ask you please be seated and
8 allow the Court to inquire with respect to the facts.

9 MR. DRANOVE: Yes, sir.

10 THE COURT: So, these officers you knew they
11 were Detectives when they were in the apartment. Was
12 that before or after they gave you the telephone?

13 THE WITNESS: They went to look around and
14 they talked between each other and they told me they
15 were going to get an interpreter.

16 THE COURT: Did you know they were police
17 officers before or after you had the telephone
18 conversation?

19 THE WITNESS: When they came in I knew they
20 were detectives because my husband was telling me they
21 were detectives.

22 THE COURT: So when they made a phone call and
23 gave the phone to you to speak to somebody did you know
24 that the person was a detective on the other end of the
25 phone?

1 THE WITNESS: No.

2 THE COURT: Counsel continue.

3 Q Miss Casallas, isn't it a fact that the person that
4 spoke to you on the other side of the phone identified
5 themselves as being Detective Rivera?

6 A No.

7 Q What did you speak to this person about?

8 A He asked if Mr. Enrique Rivera was living there and
9 if he was there and I told him no. And he said okay.

10 Q So, isn't it a fact that the Detective or the other
11 person on the phone asked you about the camouflage jacket
12 that was on the floor in your apartment?

13 A No.

14 Q Isn't it a fact that you told Detective Rivera that
15 that camouflage jacket and clothing belonged to your son?

16 A When he picked it up in the room he told me in
17 English and I could understand a little bit and he asked me
18 who do they belong to? And I told him they belong to my
19 son.

20 Q So you did tell the Detectives that that clothing
21 belonged to your son Enrique Rivera?

22 A Yes.

23 Q Isn't it a fact that you told the Detectives that
24 your son was there at about eight p.m. the night before;
25 isn't that correct?

1 A Yes, that he had been there, but he left. They
2 didn't believe me and they continued to look around the
3 house.

4 THE COURT: I'm going to stop you.

5 When you said that to the Detectives did you
6 say that on the phone to Detective Rivera or did you
7 tell the police officers who were in the apartment?

8 THE WITNESS: The ones that were in the house.

9 THE COURT: Did you say it in English or in
10 Spanish?

11 THE WITNESS: Spanish. Some things I tried to
12 say in English and I just try --

13 Q How do you say your son's name?

14 A Kekay.

15 Q Kekay. That is his nickname; right?

16 A Uh huh.

17 Q That is short for Enrique?

18 A That is his name. I call him Kekay.

19 Q You call him Kekay.

20 MS. CHU: If I could have one moment, your
21 Honor.

22 Q Isn't it true, Miss Casallas, that once the
23 Detectives are inside your apartment and you identified
24 the clothing as being your son's that you allowed them
25 to take it?

1 A No, they just took it without my permission.

2 Q You tried to stop them?

3 A No.

4 MS. CHU: I have nothing further, your Honor.

5 THE COURT: Counsel.

6 REDIRECT EXAMINATION

7 BY MR. DRANOVE:

8 Q Miss Casallas, did you give the police permission
9 to enter your apartment?

10 A No.

11 Q Did you hear your husband in English or Spanish
12 speak to the police as they were entering the apartment?

13 A In Spanish cause my husband don't speak English,
14 just a little bit.

15 MR. DRANOVE: No further questions.

16 THE COURT: Counsel.

17 RECROSS EXAMINATION

18 BY MS. CHU:

19 Q Miss Casallas, but you opened the door for them;
20 correct?

21 A Yes.

22 Q When they walked in you didn't try and push them
23 out; did you?

24 A No.

25 MS. CHU: Nothing further.

1 A I was afraid.

2 THE COURT: Any redirect counsel?

3 MR. DRANOVE: No. Miss Casallas, I think the
4 lawyers have no more questions for you. I don't know if
5 the Judge does, but thank you for coming here.

6 THE COURT: You're excused.

7 MR. DRANOVE: No further questions.

8 (Witness excused.)

9 THE COURT: Call your next witness counsel.

10 MR. DRANOVE: Judge, I'm not prepared to call
11 another witness now.

12 THE COURT: Does that mean the defense rests?

13 MR. DRANOVE: I would like to see if I could
14 get the stepfather in maybe this afternoon.

15 THE COURT: We will be back at 2:30. If you
16 want to have him have him here by 2:30.

17 MR. DRANOVE: I will do everything I can.

18 THE COURT: If there is any rebuttal witnesses
19 for purpose of the hearing you'll have your witnesses
20 ready at 2:30 also.

21

22 A F T E R N O O N S E S S I O N

23

24 THE CLERK: This is a continuation of the
25 hearing from this morning, People versus Enrique Rivera

1 THE COURT: Call your next witness.

2 MR. DRANOVE: Mr. Carlos Casallas.

3 (Whereupon, an Official Spanish Interpreter
4 was present to interpreter English to Spanish and
5 Spanish to English.)

6 CARLOS CASALLAS, having been first duly sworn,
7 testified as follows:

8 THE CLERK: If you'll give us your name and
9 county of residence.

10 THE WITNESS: Carlos Casallas.

11 THE COURT: Spell it.

12 THE WITNESS: C-A-S-A-L-L-A-S.

13 THE CLERK: Do you live here in Kings County,
14 Brooklyn?

15 THE WITNESS: Red Hook, Brooklyn.

16 THE CLERK: Thank you.

17 THE COURT: Counsel.

18 DIRECT EXAMINATION

19 BY MR. DRANOVE:

20 Q Good afternoon Mr. Casallas. I'm going to ask you
21 questions and your answers have to be spoken. For
22 example, if the answer is yes you can't shake your head.

23 A Okay.

24 Q Thanks. Are you married?

25 A Yes.

1 Q Who is your wife?

2 A Anna, Anna Casallas.

3 Q She is sitting in the back of the courtroom?

4 A Yes, she is sitting in the back.

5 MR. DRANOVE: Because they are both witnesses I
6 would just like to now ask Miss Casallas to step out
7 because they may both end of testifying at trial.

8 THE COURT: Was she sitting here for the first
9 portion, the People's direct examination of the
10 witnesses this morning?

11 MR. DRANOVE: No.

12 THE COURT: You're sure she wasn't in the
13 courtroom this morning for those witnesses? I do
14 believe I saw her sitting there.

15 MR. DRANOVE: I asked her to step out early on.
16 She went into the witness room.

17 THE COURT: Have her step out. Just proceed.

18 Q Mr. Casallas, in late February of 2005 were you
19 home one evening when something unusual happened? Were
20 you at home when something unusual happened?

21 A Yes.

22 Q Please tell the Judge and everyone else in the
23 courtroom what happened.

24 A They knocked on the door and they knocked very
25 hard. And then my wife went to open the door. When my wife

1 opened the door there was a big group of men. They were
2 well dressed and they looked very strong. Then my wife got
3 scared. Then she turned around to let me know, but then at
4 that time they started to come into the apartment. And in
5 that group there was a woman.

6 Q When they started to enter the apartment did any of
7 them speak to you?

8 A No.

9 Q Did any of them speak to you in Spanish?

10 A No.

11 Q Did any of them speak to you in English?

12 A Not neither, no.

13 Q Did anyone of the people who entered the apartment
14 ask you for permission to enter the apartment?

15 A No, at no time at all.

16 MR. DRANOVE: Thank you. I have no further
17 questions. The prosecutor has the right to ask you
18 questions.

19 THE COURT: Thank you counsel. Miss Chu.

20 MS. CHU: Thank you.

21 CROSS-EXAMINATION

22 BY MS. CHU:

23 Q You said that there was a number of people that
24 were standing outside the door.

25 A When they opened the door I saw the group. When my

1 wife opened the door.

2 Q But she did open the door; correct?

3 A Yes. Sure.

4 Q Then she stepped away from the door; correct?

5 THE INTERPRETER: And she stepped away from the
6 door?

7 Q Then she stepped away from the door?

8 A Yes, she stepped away to let me know.

9 Q Well, that's when they walked in; right?

10 A Yes. When she stepped away about one or two meters
11 they started to come in.

12 Q Did you ever try and stop them or tell them to
13 leave the apartment?

14 A No, no, no.

15 Q Isn't it correct that you knew that they were
16 police though; right?

17 A I didn't know they were -- I didn't know that they
18 were police officers or police. With so many people coming
19 in we were very nervous. They didn't show any document.

20 THE COURT: What did you think was happening
21 when these men in suits came into your apartment?

22 THE WITNESS: I didn't know what was happening.
23 I asked them and they didn't answer me.

24 THE COURT: So a bunch of men in suits just
25 walked into your apartment. Did you ask them why they

1 are coming in and who they were?

2 THE WITNESS: With a woman. Nobody answered.

3 Q Were you speaking in English or were you speaking in
4 Spanish?

5 A I was speaking in Spanish because I don't speak
6 English.

7 Q You don't speak any English?

8 A Very little.

9 Q What do you do for a living?

10 A I work for a company that makes books.

11 Q That makes books?

12 THE COURT: Spanish books?

13 THE WITNESS: No.

14 THE COURT: English books?

15 THE WITNESS: Yes, in English.

16 Q How long have you worked for this company?

17 A Almost ten years.

18 THE COURT: Ten years you've been working for
19 a company that makes English books?

20 THE WITNESS: They distribute the books.

21 THE COURT: All right, Miss Chu, ask some
22 questions. Just answer the question.

23 MR. DRANOVE: Your Honor, let the witness --

24 THE COURT: Counsel, I'm the one determining
25 the facts, please.

1 Q Mr. Casallas, how long have you been in this
2 country?

3 A Twenty years.

4 Q Twenty years. In fact, your wife works too; right?

5 A My wife is not working. I work for her.

6 Q She doesn't work as a baby-sitter?

7 A Well, she takes care of a child, you know, she
8 takes him to school.

9 Q How old is this child?

10 A The child is about three years old.

11 Q Now, you said that no one asked you for permission
12 to enter into your apartment; is that what you're saying?

13 A Nobody asked permission to come into my apartment.

14 Q Do you remember one of the men had white hair that
15 came into your apartment; do you remember that?

16 A It was a group of men moving inside the apartment.

17 Q Were they jogging around your apartment?

18 MR. DRANOVE: Objection. No need to belittle
19 the witness.

20 THE COURT: Sustained.

21 Q Were any of the men or did any of the men have white
22 hair?

23 A I don't remember.

24 Q Did you stay inside that first area where you walk
25 into your apartment the entire time these men were inside

1 your apartment?

2 A I stayed near the kitchen near the door.

3 Q Were you by your wife during the entire time these
4 people were in your house?

5 A My wife went to one of the bedrooms.

6 Q Do you recall that your wife actually got on one of
7 the Detective's cell phones while they were in your
8 apartment?

9 A They allowed her to talk to somebody.

10 Q And she was speaking in Spanish; isn't that
11 correct?

12 A Yes, that is correct.

13 Q Isn't it a fact that she told the person on the
14 telephone that the clothing that was on the floor in your
15 apartment belonged to your son?

16 A I didn't hear at that moment.

17 Q Do you recall that there was some clothing on the
18 floor inside your apartment?

19 A They were my clothes. I have changed my clothing
20 and they wanted to take my clothing.

21 Q Did they take your clothing?

22 A No because I told them not to take it, that it was
23 my clothes.

24 Q So they didn't take your clothes?

25 A They put it back where it was.

1 Q They didn't want your clothes; right?

2 MR. DRANOVE: Objection.

3 A I don't know.

4 MR. DRANOVE: Goes to state of mind.

5 THE COURT: Sustained.

6 Q There were other clothes on the floor; isn't that
7 correct? There was a camouflage jacket on the floor?

8 A In one of the bedrooms.

9 Q That, in fact, was your son's jacket; is that
10 correct?

11 A Yes.

12 Q Your son, Enrique Rivera, who is sitting right over
13 there?

14 A Yes.

15 Q And it had a matching hat to it too; right?

16 A I don't remember the color. But I remember they
17 took the jacket, they took the hat and I think they took
18 some sneakers and they also took a sweater.

19 Q A sweatshirt?

20 A Oh, one that has like a hood.

21 Q Like a hooded sweatshirt?

22 A I don't know how they call it.

23 Q And all those things or all those items of clothing
24 were, in fact, your son's, Enrique Rivera; correct?

25 A The ones that they took, yes.

1 Q Isn't it also true that Enrique Rivera had come by
2 your house about eight p.m. the night before?

3 A Yes. Yes, he was in the house the day before, yes.

4 Q In fact, that is when he left that clothing there
5 on the floor?

6 A Yeah, he did change clothes, yes.

7 Q You said that while your wife was on the telephone,
8 one of the men's cell phone, that you didn't hear the entire
9 conversation she had about the other person on the phone?

10 A I didn't hear her.

11 Q Is it fair to say you don't know what she said on
12 that telephone?

13 A No, I didn't hear. Yes.

14 Q You never tried to tell the police that they needed
15 to leave your apartment; did you?

16 A I was very nervous. There were many men in there
17 and they were coming in and out, they were coming in and
18 they were leaving. It was in and out, in and out.

19 THE COURT: You testified earlier you didn't
20 know who the men were. At any time did you find out who
21 they were?

22 THE WITNESS: No. They didn't present any
23 credentials for me to find out who they were.

24 THE COURT: At no time while they were in the
25 house did you know they were police officers?

1 THE WITNESS: They didn't present any
2 credentials.

3 THE COURT: Did you think these people came to
4 your apartment to rob your son's clothes?

5 THE WITNESS: No. They were very well dressed
6 to be thieves.

7 THE COURT: Continue counsel.

8 Q Isn't it a fact, sir, that you told your wife these
9 were police officers?

10 A No, I didn't know.

11 Q Well, if your wife said that you told her they were
12 police then she would be incorrect?

13 MR. DRANOVE: Objection.

14 THE COURT: Sustained.

15 MS. CHU: I have nothing further.

16 THE COURT: Counsel.

17 REDIRECT EXAMINATION

18 BY MR. DRANOVE:

19 Q Mr. Casallas, did you and I first meet this
20 afternoon in this building?

21 A Yes.

22 Q Were you at work this morning?

23 MS. CHU: Objection, your Honor. This is
24 beyond the scope of my cross.

25 THE COURT: Overruled.

1 A Yes.

2 Q What do you do at the company?

3 A I gather orders to be sent to the doctors.

4 THE COURT: Are these orders written in
5 Spanish?

6 THE WITNESS: We go by numbers, your Honor.

7 THE COURT: Are there only numbered orders?

8 THE WITNESS: Yes.

9 THE COURT: There is no English words on
10 there?

11 THE WITNESS: The titles of the books, though
12 the numbers are the important ones.

13 THE COURT: So you never read the titles on
14 the books?

15 THE WITNESS: I read the titles. I could try
16 to learn a little bit of English.

17 THE COURT: When you deliver a book and it
18 goes to the doctor and it's the wrong book and they tell
19 you it was the wrong book how do you know if it was or
20 wasn't the wrong book?

21 MR. DRANOVE: I object.

22 THE COURT: You brought it up, counsel. I'm
23 curious as to what the extent of his language skills
24 are. I think that is relevant to this hearing. I'm
25 also concerned about the credibility of this witness.

1 MR. DRANOVE: What about the Detectives?

2 THE COURT: I'm concerned about the credibility
3 of this witness.

4 MR. DRANOVE: What about the Detectives?

5 THE COURT: I'll hear your argument.

6 MR. DRANOVE: I'm not going to make an argument,
7 Judge, I think I understand.

8 THE INTERPRETER: Can you repeat the question?

9 THE COURT: I don't need to know the answer.
10 You're excused.

11 (Witness excused.)

12 THE COURT: Call your next witness.

13 MR. DRANOVE: I have no further witnesses,
14 Judge.

15 THE COURT: Any rebuttal requests?

16 MS. CHU: No.

17 THE COURT: Ready to proceed to argument
18 counsel?

19 MR. DRANOVE: I'll stand here.

20 THE COURT: Wherever you want.

21 MR. DRANOVE: Thank you. With respect to the
22 recorded statement I believe it's clear my client did
23 not affirmatively waive his rights and that the
24 prosecution has the burden of proof that he did and they
25 cannot prove it.

1 With respect to the other two statements the
2 testimony stands.

3 With respect to the lineup the Judge has seen
4 the pictures. Judge, you've seen the pictures and
5 you'll make up your own mind.

6 With respect to entry into the apartment, what
7 are two humble, simple people supposed to do when a
8 bunch of large white guys start walking in?

9 THE COURT: We don't know if they were all
10 white people.

11 MR. DRANOVE: We saw two of them. They come
12 in, we know they are hot on a trail of someone who is an
13 alleged perpetrator. These are simple people, Judge,
14 they are not going to call a lawyer. When the lady
15 turned around to tell her husband these people are here
16 they just came in and they are waiting for you to sort
17 it out in a way that favors them. I think they are salt
18 of the earth people who told the truth.

19 If a man picks a book by number that doesn't
20 make him fluent in English. That is all he does, he
21 picks it by number and it goes somewhere else. He is
22 not in the department of speaking to doctors who orders
23 books.

24 A woman who is taking care of a baby is
25 another humble person. I think the testimony speaks for

1 itself.

2 The Detectives, didn't have any warrants, who
3 think they are going to find a man there, don't. They
4 kept looking. They had no right to take any property.
5 My client didn't give them permission to take the
6 property. They had no right to be in the apartment in
7 the first place.

8 Some of these questions, such as did you try
9 to push the detectives out -- I mean, could you imagine
10 if she tried to push the Detectives out?

11 THE COURT: Let's not point fingers or address
12 anybody in an unprofessional manner.

13 MR. DRANOVE: If anybody tried to push
14 Detectives out of an apartment they would be arrested
15 for obstruction of justice, assault and after they got
16 out of the hospital for the beating for being put in
17 their place. To ask that of these people I think is
18 insulting to all of us.

19 The entry was illegal. Everything that flows
20 from it should be suppressed.

21 THE COURT: Meaning the property recovered?

22 MR. DRANOVE: The property.

23 THE COURT: Thank you very much, counsel.

24 MR. DRANOVE: You're welcome, sir.

25 THE COURT: Miss Chu.

1 MS. CHU: Yes, your Honor.

2 Going to the Huntley portion of the hearing
3 first, I believe the evidence given at the time of this
4 hearing indicated that each and every statement the
5 Defendant gave to both the police as well as the
6 Assistant District Attorney were a voluntarily, knowing
7 and intelligent waiver of his Miranda rights.

8 The defense counsel made issue with regard to
9 the fact that the Defendant during the videotaped
10 statement said "we here". I think it's quite clear from
11 his actions he was acquiescing in speaking to the
12 Assistant District Attorney after being advised of all
13 of his rights.

14 THE COURT: He had been advised earlier when he
15 was first arrested.

16 MS. CHU: True.

17 THE COURT: I believe that was exhibit --

18 MS. CHU: Exhibit 2.

19 THE COURT: 2 in evidence.

20 MS. CHU: Moving on to the Wade portion of the
21 hearing. Obviously, your Honor, you have the
22 photographic array in evidence as well as the lineup
23 photos.

24 THE COURT: Why don't we address the last
25 issue.

1 MS. CHU: Okay, I'll move on to that.

2 I think Detective Gaynor and Detective
3 Rivera's testimony has not been controverted despite the
4 fact that both Mr. and Mrs. Casallas has testified at
5 this hearing regarding what transpired as being
6 something different than from Detective Gaynor and
7 Detective Rivera testified to.

8 Detective Gaynor and Detective Rivera, I
9 thought, were credible witnesses setting forth exactly
10 how they proceeded. I think it's clear once Detective
11 Gaynor was speaking with both of them he indicated that
12 he knew that they were having difficulty understanding
13 what they were saying and that is why they reached out
14 to Detective Rivera, which was corroborated by both Mr.
15 and Mrs. Casallas, that she was on the telephone, on one
16 of their cell phones.

17 I think Mr. and Mrs. Casallas actually didn't
18 jive with each other because she said the reason why --

19 THE COURT: Miss Chu, that aside, what about
20 the fact that they didn't make a phone call until they
21 were already in the apartment?

22 MS. CHU: That is because they didn't know what
23 the language abilities would be.

24 THE COURT: If they didn't know if he could
25 speak English or not what were they doing in the

1 apartment?

2 MS. CHU: He said they were let in. They had
3 limited amounts of English. Each witness says they
4 speak a little English.

5 In her testimony she says she looked through
6 the peephole, sees the people outside, goes to see her
7 husband and then goes outside.

8 He testified she already opened the door and
9 then goes to get him.

10 There they are not even consistent with what
11 it is they are trying to set forth to this Court as who
12 how the door got opened.

13 THE COURT: I think they were consistent and
14 suggest to the Court they never gave permission of these
15 people to go into the apartment. I think they were
16 called for that purpose and said the same thing.

17 MS. CHU: I thought it was inconsistent in
18 their recollection of how the door opened, why she
19 turned around.

20 THE COURT: That goes to their credibility as
21 to their consistency or purpose for why they testified.

22 Is there anything else?

23 MS. CHU: Yes, your Honor.

24 I believe whatever transpired during her
25 either walking away or letting Detective Gaynor and

1 whoever he was with and Detective Darino come to the
2 apartment it was clear that action alone can give
3 consent for someone coming in.

4 In fact, there is a case People versus Davis
5 120 AD2d at page 604 where it says that stepping aside
6 to allow the police to enter the premises can be
7 considered consent. You don't actually need words to
8 say yes, you may come into my home.

9 THE COURT: When was that decided and where?
10 What was the site?

11 MS. CHU: People versus Davis.

12 THE COURT: It's all right. Proceed. It's
13 okay. Just proceed.

14 MS. CHU: There is also case law in People's
15 versus Schoff 136 AD2d 578 Second Department 1988 case.
16 It says once the police have entered the home, not
17 directing them to leave or in any way indicating that
18 they don't have permission to remain is also considered
19 to be consent.

20 I believe that once the Detectives were inside
21 the apartment, not being asked to leave, I believe that
22 they believed by Miss Casallas opening the door and
23 moving away from the door that she was letting them in.
24 Once they are inside the apartment the clothing on the
25 floor was in plain view. Knowing that the perpetrators

1 that were involved in this case were wearing very
2 specific clothing; camouflage coat, camouflage hats,
3 etc., and seeing that type of clothing there, once they
4 spoke to Detective Rivera who translated what Miss
5 Casallas said, she corroborated as well, she indicated
6 that clothing was her son's and that it had been left
7 there when he was there at eight o'clock. It
8 corroborates the testimony by Detective Rivera and
9 Detective Gaynor about the conversations that they had
10 with her via Detective Rivera translating.

11 I believe once they were in there the plain
12 view doctrine supersedes that they could have taken
13 those items of clothing, in addition to the fact that
14 Detective Rivera indicated she said it was okay for them
15 to take it. In fact, she was very cooperative with
16 them. She said she would let them know if she got in
17 touch with her son, she would contact them.

18 I believe the evidence before this Court is
19 clear they had consent not only to enter the apartment,
20 but they had consent to take the clothing they saw in
21 plain view in the apartment.

22 These witnesses say he doesn't even live
23 there. I don't know whether or not right to privacy
24 issues come into effect. I think consent and plain view
25 doctrine should come into effect when seizing the

1 Defendant's property from the apartment.

2 MR. DRANOVE: May I?

3 THE COURT: Briefly.

4 MR. DRANOVE: Interesting the prosecutor asked
5 you to accept the testimony of defense witnesses as a
6 hundred percent true in each and every regard except
7 saying they didn't give permission to enter.

8 The fact she cites a case where perhaps we
9 find someone who says you want to come in, step aside,
10 that is not what happened here.

11 I recall arguing a case in the Appellate
12 Division First Department People versus Glasstone Graham
13 in the Bronx. They got into the building, they went to
14 an apartment, knocked on the door to the apartment he
15 was in. Someone opened the door and they went in. In
16 that apartment they found a kilo of cocaine. It was
17 suppressed.

18 I remember the argument they said what is
19 this, the wild west? That was spoken by the judge from
20 the Appellate Division. It's still the wild west in
21 Brooklyn if this is allowed to be continued. They
22 didn't even wait to get a Spanish speaking Detective
23 with them to tell this family in their apartment we are
24 here, we would like to come in, we would like to see if
25 your son is here.

1 They are in the apartment for an unknown
2 period of time before they could think maybe we should
3 find out if we should be here. They had opportunities
4 galore. They had a Detective stationed out back in case
5 someone is going to jump out of a window, I suppose.
6 They could have had a Spanish speaking officer with them
7 or on the phone. It was their own choosing to rush and
8 do this in haste and they shouldn't be excused.

9 THE COURT: Thank you counsel. Let me take a
10 few minutes.

11 (A short recess was taken.)

12 THE CLERK: Mr. Rivera is again present.

13 THE COURT: I'm ready to proceed with my
14 decision with respect to the hearing that was just
15 conducted.

16 A Wade, Huntley with the Payton issue hearings
17 were conducted before me. The Wade hearing dealt with
18 six lineups. The Huntley hearing dealt with an oral,
19 written and video statement. And the Payton issue dealt
20 with a baseball hat, camouflage jacket and -- I'm sorry,
21 what was the other piece?

22 MS. CHU: Hooded sweatshirt.

23 THE COURT: Sweatshirt, jacket and hat that
24 were recovered from the parents' apartment of the
25 Defendant while the Defendant wasn't present.

1 The People called three witnesses. I want to
2 begin by indicating that I found all three of the
3 People's witnesses to be credible.

4 First witness called was Detective John
5 Darino, an investigating Detective from the 72 Detective
6 Squad. He testified that on February 27th, 2005 he was
7 in the confines of the 72 precinct. He received a
8 notification of a homicide at El Borinquen Bar at 314
9 39th Street. He was assigned as the case Detective at
10 0800 hours. He spoke with witnesses. I don't know if
11 it was at the scene or not who indicated to him that
12 Kekay was the person who committed the homicide.

13 Kekay has been identified as the Defendant.
14 He was the person identified as the perpetrator of the
15 crime.

16 At 2050 or 8:50 p.m. a photo array was
17 created. Confidential witness, identified as
18 confidential witness number six viewed the photo array.
19 It was shown to that person at 9:10 p.m. the witness
20 recognized number 2 as the person who committed the
21 crime. Number 2 was the photo of the Defendant.

22 The statement made was he was the male
23 punching and swinging hands at the person who was
24 stabbed.

25 The copy of the photo array was introduced as

1 People's 1 in evidence for purpose of the hearing. The
2 Court viewed the photo array and there was nothing
3 unduly suggestive in the photo array, none of the
4 photographs seemed to suggest that the police had
5 already made a selection of one of the photographs.

6 On 2/28/05 information was received that the
7 Defendant was at 172-18 Effington Avenue in Flushing,
8 New York. This Detective or this witness went to that
9 location with Detective Gaynor at 4:20 a.m. it was a
10 private house, detached. A Patricia Glasgow opened the
11 door. They had arrived at approximately five a.m. the
12 Defendant was on the couch. He was arrested, brought to
13 the 72 precinct interview room.

14 At 5:15 a.m. he spoke with -- this witness
15 spoke with the Defendant in the interview room. He
16 testified that Detective Gaynor was with him. He read
17 Miranda warnings to the Defendant. Copy of the warnings
18 that were read were introduced as People's 2 in evidence
19 for purpose of the hearing.

20 The Court had an opportunity to review that
21 Miranda warnings sheet. Defendant wrote that he
22 understands or marked a yes with his initials next to
23 all of the questions on the Miranda warnings sheet, also
24 signed the bottom of the sheet. Afterwards, he orally
25 agreed to speak with the officers.

1 He indicated in sum and substance that he went
2 to the bar, there was a small confrontation, there was a
3 guy looking at him in a crowded room, crowd rose, he
4 took out a knife and used it in self-defense. He swung
5 it at the crowd in self-defense.

6 The Defendant was then asked to write down a
7 statement. That statement was introduced into evidence
8 as People's 3 for purpose of the hearing. The Court had
9 an opportunity to review that statement. It was signed
10 by the Defendant. Ten a.m. 2/28/05, the Defendant,
11 approximately five hours after he was brought to the
12 precinct spoke with an Assistant District Attorney and
13 made a videotaped recording. That tape was introduced
14 into evidence as number 4. The Court viewed the tape.
15 The Defendant was read his rights on the tape and he
16 indicated "we here" as a response to that recitation of
17 rights prior to giving the videotaped statement.

18 This witness testified that lineups were
19 conducted. The Defendant was the subject of the
20 lineups. Six people were contacted and brought to the
21 precinct to view the lineups. Numbers five and six or
22 confidential witnesses five and six were picked up by
23 the Police Department and brought there. Number one
24 through number four came of their own accord. They were
25 all placed in different rooms except for five and six

1 who came together who were seated together prior to the
2 viewing.

3 The Defendant was in a room that was separated
4 from those who were brought to view the witnesses. The
5 Defendant was in the viewing room/interview room the
6 entire time he was in the precinct. He could not be
7 seen by witnesses prior to the lineup. Fillers were
8 obtained; two from the neighborhood, three police
9 officers. Police officers who were used as fillers were
10 not seen by the witnesses. Photograph of the lineup was
11 introduced as People's number 5 in evidence for purpose
12 of the hearing. The Court had an opportunity to view
13 the lineup photographs. The Defendant had chosen
14 position number 4 in the lineup.

15 At 4:18 p.m. witness number one viewed the
16 lineup, picked out number 4, said he's the guy from the
17 bar, the guy who stabbed the victim.

18 Number two viewed the lineup, picked number 4,
19 said he's the guy who punched the kid.

20 Number three picked number 4, the Defendant,
21 of course, being number 4 and said that's the stabber.

22 Number four viewed the lineup and was unable
23 to make an identification.

24 Number five viewed the lineup and picked
25 number 4 also, the Defendant, and said that's Enrique.

1 Number six viewed the lineup, picked number 4,
2 also the Defendant, said that's the guy swinging his
3 arms and punching the victim.

4 Witnesses once again did not meet before the
5 lineup. They all left through the side door after they
6 had an opportunity to view the lineup.

7 The witness testified that the Defendant had
8 been fed on several occasions, was given drink
9 continuously during the time he was in custody.

10 Between each lineup the Defendant had been
11 asked whether or not he wanted to change seats. That
12 was the sum and substance of the testimony of the
13 Detective.

14 The second witness called by the People,
15 Detective James Gaynor testified that he works for
16 Brooklyn South Homicide, he has been a New York City
17 police officer for twenty years. On 2/27/05 he went to
18 speak with the Defendant, at 2/27/05 at one a.m. at 30
19 Bush Street, apartment ten. He went to the Defendant's
20 mother's residence. She could not speak English. He
21 was with Detective Darino. He testified that the mother
22 let him into the residence. Upon entering the residence
23 he saw a jacket camouflage, an army hat, brown
24 sweatshirt all on the floor.

25 Detective Rivera was contacted by this

1 Detective, phone was given to the mother of the
2 Defendant. She spoke with Detective Rivera. Detective
3 Rivera asked her if she knew where her son was and asked
4 if it would be okay if the police who were in the
5 apartment took the clothing.

6 Then it was indicated by Detective Rivera
7 consent was given to take the clothing. The witness
8 took the clothing and vouchered it at the precinct.

9 30 Bush Street was a project, an apartment
10 building. There was no warrant to search these
11 premises.

12 That was the sum and substance of what that
13 Detective testified to.

14 The third witness was Detective Hector Rivera.
15 He testified he has been a New York City Police
16 Department Detective -- that he is a New York City
17 Police Department Detective. He has been on the Police
18 Department for nineteen years. He works out of the 72
19 precinct. On 2/28/05 at one a.m. he spoke with
20 Detective Gaynor. He had been in another apartment at
21 the time searching for the Defendant. He spoke on his
22 cell phone. He said he had a conversation with the
23 Defendant's mother in Spanish. He asked her about where
24 the Defendant was and also about whether or not the
25 police could take the clothing from the apartment.

1 He indicated that the witness said that the
2 police could take the clothing from the apartment. He
3 testified she gave him permission to take the clothing;
4 that she said Detective Gaynor could take the clothing.
5 She said she didn't know where the Defendant was.

6 That was the People's case with respect to the
7 hearing, direct case, at which time the Defendant called
8 two witnesses for purposes of the hearing; Miss Anna
9 Casallas and Carlos Casallas.

10 Insofar as both witnesses indicated they spoke
11 a little bit of English, I found that to be credible.
12 As far as both witnesses indicated that they were
13 related to the Defendant, I found that to be credible.

14 As far as both witnesses testified that they
15 were frightened at the arrival of their apartment by the
16 police, I find that to be credible.

17 There were other portions of the testimony
18 that I found to be less than forthright. I'm not
19 totally convinced as to whether or not they gave the
20 police permission to enter the apartment and I'm not
21 totally convinced that they didn't give police
22 permission to take the clothing, although one testified
23 that they didn't give permission to take the clothing.

24 I found the first witness, Miss Casallas, to
25 be evasive with respect to several points that were

1 directly asked to her by the Court, somewhat evasive in
2 any event. The fact that she is the mother of the
3 Defendant is certainly something the Court is going to
4 consider when judging the testimony of the witness as a
5 whole.

6 In any event, regardless of the complete
7 credibility of the witness' testimony, I'm not convinced
8 that she came in here and completely lied about
9 everything that she said. I do think, as I indicated,
10 there were some portions in her testimony where she was
11 either less than candid or somewhat evasive. That being
12 said, at no point during her testimony did she indicate
13 that the police in any way forced themselves into the
14 apartment; that she strenuously or in any way asked them
15 to leave once they were in the apartment and the same is
16 true with respect to Mr. Carlos Casallas, the
17 stepfather.

18 During the course of his testimony he
19 indicated he never gave police permission to enter the
20 apartment or to take the clothing, but at no time did he
21 testify he told them to leave the apartment once they
22 were there. He actually indicated at no point did he
23 even know who they were; that I find to be somewhat
24 incredulous. I can't imagine a group of police officers
25 or people would enter a person's apartment, stay there,

1 take property and the person who owned the apartment
2 would have no idea what they, in fact, were doing in the
3 apartment.

4 Miss Casallas indicated she did have a
5 conversation with Detective Rivera. I can't imagine she
6 had a conversation with Detective Rivera and at that
7 point was unaware that Detective Rivera was a police
8 officer, although she strenuously insisted she didn't
9 know these were police officers. I find that to be
10 incredulous. I can't imagine that either of these
11 witnesses didn't know who the people who came into the
12 apartment were at that time in the morning dressed the
13 way they were. As I indicated, at no point did either
14 witness testify that they asked these people to leave.

15 In any event, that is the findings of fact
16 with respect to this hearing.

17 With respect to my conclusions of law I'm
18 going to begin with the fact that at pretrial hearing to
19 suppress evidence obtained as a result of an alleged
20 illegal arrest it's the People's burden to demonstrate
21 the legality of the police conduct in the first
22 instance. I'm going to cite People's versus Wise at 42
23 NY2d 321 page 329. A lot of other cases support that
24 proposition.

25 The Defendant however does bear the ultimate

1 burden of proving by a preponderance of the evidence the
2 credible evidence that the evidence should not be used
3 against him and that the police lacked probable cause to
4 arrest the Defendant. I'm going to cite People versus
5 Berrios at 28t NY2d 367, People versus Baldwin 25 NY2d
6 66 page 70 and People versus Milhouse at 246 AD2d 119
7 page 123. Probable cause to arrest only requires
8 information which would lead a reasonable person who
9 possesses the same expertise as the arresting officer to
10 conclude that under the circumstances that the suspect
11 about to be arrested is about to or has committed a
12 crime. There's a lot of cases that support that
13 proposition.

14 Before me the first issue I want to deal with
15 is the Wade hearing. When a Defendant seeks suppression
16 of physical evidence and has put forward sufficient
17 factual allegations to warrant a pretrial hearing, that
18 Defendant bears the ultimate burden of proving that the
19 evidence should not be used against him. Once again
20 citing Berrios, page 367. Although a Defendant carries
21 the burden of proof in a suppression hearing the People
22 are nevertheless put to the burden of going forward to
23 show the legality of the conduct of the police in the
24 first instance.

25 Now, with regard to the Wade issues, the

1 purpose of a Wade hearing is to determine whether a
2 police conducted pretrial identification procedure was
3 unduly and impermissibly suggestive so as to deny the
4 Defendant his due process rights.

5 Now the People have the initial burden of
6 going forward to establish the reasonableness of the
7 police conduct and the lack of any undue suggestiveness
8 in a pretrial identification procedure. The Defendant
9 once again bears the ultimate burden of proving that
10 such procedure was unduly suggestive.

11 Now in this case a photographic display was
12 used. Now, a photographic display is suggestive only
13 where some characteristic of one of the pictures draws
14 the viewer's attention to that picture indicating that
15 the police have made a particular selection. I'll cite
16 People versus Cherry at 150 AD2d 475 and People versus
17 Dubois at 140 AD2d 619, page 622.

18 I examined the photographic array employed in
19 this case and I found it was not suggestive. In light
20 of the indication law there was nothing about any of the
21 pictures that drew the viewer's attention indicating the
22 police had made a particular selection. The Defendant's
23 appearance and clothes did not differ greatly from the
24 men in the other photographs. They all seemed to this
25 viewer as being close in age, similar hairstyles, skin

1 tones and facial characteristics, meeting the criteria
2 set forth in People versus Robert 184 AD2d 597. That
3 was repeated in People versus Floyd 173 AD2d 211.

4 Now, with respect to the lineup in this case
5 the Defendant also contends that the evidence of the
6 lineup identification should be suppressed because the
7 difference with respect to facial characteristics, etc.
8 of the participants or that the lineup procedure in
9 general would have rendered that procedure unduly
10 suggestive. While participants in a lineup should share
11 general physical characteristics, and that is People
12 versus Jackson at 211 AD2d 744, there is no requirement
13 that a Defendant in a lineup be surrounded by people who
14 are nearly identical in appearance.

15 There are a lot of cases, starting with People
16 versus Chip 75 NY2d 327 page 336 and many other cases
17 that support that proposition.

18 Now, this Court examined the photographs of
19 the lineup which were introduced into evidence for
20 purpose of the hearing and I conclude that the lineup
21 was not unduly suggestive. The fillers, although not
22 perfect, were similar in appearance to the Defendant.
23 The lineup constituted a fairly representative panel and
24 any witness viewing it could make a reliable
25 identification. I also found the procedures utilized by

1 the police in conducting the lineup were not unduly
2 suggestive. Criteria put forward in People versus Caban
3 181 AD2d page 787.

4 Based on all the facts and circumstances
5 presented in this case the Defendant's motion to
6 suppress lineup identifications are hereby denied.

7 Finally or secondly, a Huntley hearing was
8 conducted at which time the People again would have the
9 burden of establishing that the Defendant voluntarily
10 waived his prejudice against self-incrimination. To be
11 valid an accused waiver of his or her rights must be
12 knowingly and intelligently made the Court must always
13 ascertain whether the Defendant understood how Miranda
14 rights affected the custodial interrogation.

15 An individual may validly waive Miranda rights
16 so long as the immediate import of those warnings is
17 comprehended, regardless of his or her ignorance of
18 mechanics by which the fruits of that waiver may be used
19 later in the criminal process, as the Court of Appeals
20 stated in People versus Sirno 76 NY2d 967 from page 968.

21 Where a Defendant indicates he understands his
22 Miranda rights and promptly after having been
23 administered those rights willingly proceeds to make a
24 statement or answer questions during interrogation no
25 other indication prior to the commencement of

1 interrogation is necessary to support a conclusion that
2 the Defendant waived those rights. Also, federal case,
3 North Carolina versus Butler at 441 US 369 and New York
4 companion, People versus Davis 55 NY2d 731, a different
5 People versus Davis than was cited by counsel earlier to
6 support a different proposition that I'll be addressing
7 immediately after this.

8 I found that the Defendant in this case
9 willingly proceeded to make a statement and answer
10 questions during interrogation and no other indication
11 prior to commencement of that interrogation is necessary
12 by this Court to support the conclusion that he waived
13 his rights.

14 That aside, he indicated when he said "we
15 here" after answering yes to all the questions the Court
16 found that was, in fact, a waiver of his rights because
17 he proceeded to answer all the questions asked of him.

18 It should be noted also that two hours
19 earlier, approximately two hours earlier he signed a
20 Miranda warnings sheet and then made an oral and written
21 statement after that. So it's within two hours of being
22 already read his Miranda warnings there was no argument
23 of there not being any form of continuation.

24 Therefore, the application to suppress three
25 statements is hereby denied, although I do want to notes

1 for the record that he did say "we here" as was pointed
2 out by counsel, gratefully pointed out because the Court
3 was under the misimpression that he had said yes so I
4 was glad counsel pointed that out so I could view that
5 again. However, it doesn't change the ultimate ruling
6 that the Defendant knowingly and voluntarily waived his
7 rights and proceeded to give those statements after
8 having been formally read.

9 That brings us to the final issue, I suspect
10 the most complicated which faced us and caused the Court
11 concern because it had to do with several factors, one
12 being a determination of the credibility of the
13 witnesses, which I think I made clear during the course
14 of my recitation. But also it gave the Court some pause
15 because I believe it was necessary to review more
16 importantly the law concerning what was before me.

17 Now, the first question that I have deals with
18 standard. I'm going to address that issue, but I'm
19 going to move ahead once I've addressed that issue. One
20 seeking standing to assert a violation of his fourth
21 amendment rights must demonstrate a legitimate
22 expectation of privacy. One may have an expectation of
23 privacy in premises not one's own or a familial or other
24 socially recognized relationship. However, as the
25 undisturbed findings of the trial court, that's me,

1 demonstrate the Defendant only had a relatively tenuous
2 tie to the apartment where the property, which is the
3 subject of this, what would be considered a Payton
4 hearing was recovered.

5 The Defendant, it was clear was, as is cited
6 in the case I'm going to quote from now, People versus
7 Ortiz 83 NY2d 840, reading from the first page that I
8 have. A Defendant who is a casual visitor to an
9 apartment and would not have any reasonable expectation
10 of privacy within the apartment, especially if they
11 didn't have any expectation of privacy on the date of
12 arrest.

13 The fact that there is only a tenuous
14 relationship with the apartment, as was testified by the
15 mother and the father or the stepfather of the Defendant
16 called by the defense, would indicate to me that he
17 stayed there now and then, once in a while he came and
18 went from the apartment, but there was no indication
19 that he lived there or that he even stayed there for any
20 extended period. The testimony was that he came in,
21 changed his clothes and left.

22 So with respect to the issue of standing,
23 although not raised tangentially, I suspect raised by
24 the prosecution, the Court addresses that issue now and
25 finds that were that to be the primary concern before me

1 I'd have to find that there was no standing to even
2 contest the taking into custody of the items that were
3 taken into custody. That aside, the Court will address
4 the Payton issue in any event.

5 There is a case I want to cite dealing with
6 the issue of standing, People versus Manuel Hornedo. I
7 just have it's a Second Department, November 1, 2000
8 case. The indictment number is 7943 of 1999. This case
9 is exactly on point where a Defendant contends that the
10 police unlawfully arrested him in his mother's
11 apartment. The court held that they agree with the
12 hearing court that the Defendant failed to demonstrate
13 that he had a legitimate expectation of privacy in his
14 mother's apartment. The Defendant lived at another
15 location at the time of the arrest. He acknowledged
16 that he stayed at the other location.

17 In this case not only do we have testimony
18 that the Defendant didn't live in the apartment, but he
19 was, in fact, arrested at another address.

20 So once again, that case would support the
21 fact that there was, in fact, no standing to suppress
22 the items.

23 That aside I'm going to now move into the
24 Payton issue that was litigated in any event.

25 I would like to cite the case of People versus

1 Velez. The best cite I have is 4 Misdemeanor Third at
2 1004(a) in brackets. It's a May 12th, 2004 Bronx county
3 case. This case cites People versus Gonzales at 39 NY2d
4 122 dealing with People versus Payton 445 US 573.

5 It indicated in Gonzales that the Court of
6 Appeals examined several factors which may influence
7 one's voluntary consent to a search. Those factors
8 include whether the subject of the search was in police
9 custody, what the subject's background was, whether the
10 subject was evasive or cooperative with law enforcement
11 authorities, whether the police advised the subject of
12 his right to refuse consent, etc.

13 Accordingly, any determination regarding the
14 Defendant will turn upon the totality of circumstances
15 presented on the record and since Gonzales, Appellate
16 courts have found consent to enter one's home by
17 analyzing the occupant's words and it should be stressed
18 conduct when dealing with the police.

19 I would like to cite People versus Brown 234
20 AD2d 211. Where consent was found where a Defendant's
21 companion left the front door open and then walked over
22 to the Defendant and then the police then followed that
23 person inside. Also, People versus Satorino 153 AD2d
24 595. The Appellate Division found there was no Payton
25 violation where the Defendant's mother told detectives

1 that her son was in his room and then pointed to that
2 direction when not indicating not giving them specific
3 permission to enter.

4 More on point, I want to cite People versus
5 Davis, also cited in this case. This was a case brought
6 to my attention by the prosecutor 120 AD2d 606. I have
7 a copy of that case here too. Basically, it says
8 occupants acts of stepping aside to let officers in is
9 tantamount to consent. Consequently, when the
10 government claims to have been given consent to enter
11 one's home, an occupant's failure then to object to the
12 entry supports the conclusion of implicit permission to
13 enter. It indicates that that stepping aside when
14 people walk in is implicit permission to enter. The
15 Appellate Division upheld the police conduct in that
16 particular instance.

17 Also People versus Schoff 136 AD2d 578.
18 Consent was upheld where after entering premises
19 occupants neither asked the police to leave nor objected
20 to their presence. Also People versus Long 124 AD2d
21 1016. Occupants' cooperation with police was evidence
22 of voluntary consent to enter. While it's unclear why
23 Defendant's encounters with the police progressed into
24 someone's home, a Defendant's failure to object to
25 officers presence supports a court's finding that there

1 was, in fact, no Payton violation. And in this case as
2 opposed to a Defendant we have a witness. So a witness'
3 failure to object, but then going back to the witness,
4 as opposed to Defendant, once again returns us to the
5 issue of standing.

6 Let's just make it clear we are talking about
7 a general Payton issue as opposed to there being
8 standing or not being standing.

9 I would like to cite People versus Davis
10 itself. I would like to quote from People versus Davis
11 itself. Consent can be established by conduct as well
12 as words.

13 Davis cites People versus Abrams 95 AD2d 155
14 from page 175. Also cites United States versus Griffin
15 at 530 Fed2d 739. It also says the Defendants mother's
16 conduct in stepping aside from the door to admit the
17 officers is enough to establish consent. People versus
18 Taylor 111 AD2d 520 489 New York supp. 2d 394.

19 I think that is pretty clear that the mother
20 stepped aside and let the police in. Even the mother's
21 testimony was that she stepped aside or stepped back and
22 let the police enter the apartment. I think it's pretty
23 clear in light of the case law.

24 There are other cases I want to cite, People
25 versus Ayala Second Department 165 AD2d 878. Also

1 citing that stepping aside without saying anything is
2 not a violation. The officers can enter the apartment,
3 make an arrest and advise someone of their Miranda
4 rights without having a Payton violation. Also People
5 versus Washington at 209 AD2d 817, a Third Department
6 case indicating that stepping aside and failing to
7 direct the police to leave was tacit admissions of the
8 police or consent of the police to enter the apartment.

9 In this case testimony alone demonstrated that
10 the person tacitly consented to the officers' entry by
11 conduct, that conduct being stepping aside and failing
12 to direct the people to leave or otherwise indicate
13 after they have already entered that there was no
14 permission to stay.

15 Finally, People versus Schoff once again at
16 136 AD2d 578 and 71 NY2d 1033 also indicating failure to
17 direct police to leave the premises on entry passively
18 grants the police permission.

19 In this case, although there is some question
20 as to whether or not the police officers were actually
21 given permission or not, there is no doubt that there
22 was a phone conversation between Officer Rivera and the
23 mother and the mother didn't tell Officer Rivera in
24 Spanish that she wanted everybody to leave. She simply
25 indicated she had a conversation with the police

1 officer, Detective on the other end of the phone. There
2 is no testimony, although many opportunities, to request
3 them to leave could have been made; it was never taken.

4 These people who testified did not indicate
5 that they in any way asked the officers to leave after
6 they entered. They did say unequivocally that they
7 didn't give them permission to enter.

8 The facts and circumstances as determined by
9 this Court indicate that there was no, in fact, Payton
10 violation and counsel's application, even if they had
11 standing to suppress these items, is hereby denied.

12 Your exception is noted counsel, I'm sure.

13 Tomorrow morning 10:30.

14 MR. DRANOVE: One last point; I don't know what
15 your take on it would be. Since no more money is
16 available --

17 THE COURT: We will take that up tomorrow.

18 While waiting for the jury panel to be brought
19 up be prepared to proceed with Sandoval and Antonmarchi.

20 MR. DRANOVE: Can I get an idea of the
21 prosecution witness list?

22 THE COURT: I don't have it now. We will go
23 over it all together so we can evaluate.

24 MR. DRANOVE: I still have issues about
25 identity of witnesses.

1 THE COURT: Tomorrow morning. Same bail
2 conditions. Was Defendant given Parker warnings?

3 MR. DRANOVE: It's going to be hard for him to
4 run.

5 THE COURT: I want him to know if he does
6 voluntary absent himself by not coming tomorrow we will
7 proceed in his absence. We have had that issue.

8 MR. DRANOVE: This gentleman looks forward to
9 being here.

10 THE COURT: Good.

11 (Whereupon, the case was adjourned to June 7,
12 2006.)

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THE COURT: Tomorrow morning. Same bail
2 conditions. Was Defendant given Parker warnings?

3 MR. DRANOVE: It's going to be hard for him to
4 run.

5 THE COURT: I want him to know if he does
6 voluntary absent himself by not coming tomorrow we will
7 proceed in his absence. We have had that issue.

8 MR. DRANOVE: This gentleman looks forward to
9 being here.

10 THE COURT: Good.

11 (Whereupon, the case was adjourned to June 7,
12 2006.)

13

14

* * * *

15

16

17

18

19

It is hereby certified that the
foregoing is a true and accurate
transcript of the proceedings.

20

21

22



23

JUDITH BRUSCA

24

OFFICIAL COURT REPORTER

25

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CRIMINAL TRIAL TERM : PART 29

3 - - - - - X

4 THE PEOPLE OF THE STATE OF NEW YORK : Indictment
No. 1453/2005

5 - against - :

6 ENRIQUE RIVERA : JURY TRIAL

7 - - - - - X

8 June 27, 2006
320 Jay Street
9 Brooklyn, New York

10

11 B E F O R E:

12 THE HONORABLE ROBERT J. COLLINI,

13 J U S T I C E.

14

15 A P P E A R A N C E S:

16

17 CHARLES J. HYNES, ESQ.
District Attorney, Kings County
18 BY: PHYLLIS CHU, ESQ.
Assistant District Attorney

19

20 JOEL K. DRANOVE, ESQ.
299 Broadway, #706
21 New York, New York 10007
Attorney for Defendant

22

23

24

25

Maria E. Gordon, R.P.R.
Official Court Reporter

1 COURT CLERK: This is 1453/2005: It's the other
2 case on trial Enrique Rivera. Mr. Rivera is present.

3 Could we have counsel give their appearance.
4 The People are present, the jury is not.

5 THE COURT: I have a document in front of me.
6 It's entitled Jury Note. The time of the note is
7 2:30 p.m. It's been shown to both counsel. The date is
8 6/27/06. My name is stamped to the note. It's signed by
9 the foreperson. It's been marked Court Exhibit Number 13.

10 The body of the note reads as follows "Your
11 Honor, may we have the copy of the definitions for the
12 verdicts and direct and circumstantial evidence." That
13 was brought into the jury room. "Pictures inside bar."
14 That was brought into the jury room. "Testimony of DNA
15 expert."

16 It's my intention to bring the panel in and have
17 the court reporter read the testimony of the DNA expert.
18 It runs approximately 22 pages. Any objection, counsel?

19 MS. CHU: No.

20 THE COURT: Counsel?

21 MR. DRANOVE: No, sir.

22 COURT OFFICER: Ready for the jury?

23 THE COURT: Yes, please.

24 (WHEREUPON, the jury returned to the jury box
25 and the following proceedings takes place before the Court

1 and jury as follows:)

2 COURT OFFICER: All twelve deliberating jurors
3 are now present. Both sides waive the reading of roll?

4 MS. CHU: Yes.

5 MR. DRANOVE: Yes.

6 THE COURT: Thank you. I have a document in
7 front of me. It's entitled Jury Note. It's signed by the
8 foreperson. Again, I'm getting to know this signature
9 very well. It's Court Exhibit Number 13. My name is
10 stamped to the note. The body of the note reads as
11 follows "Your Honor, may we have a copy of the definitions
12 for the verdicts and direct and circumstantial evidence."

13 I know that was brought in to the jury room.
14 Plus "pictures inside the bar." I know that was brought
15 into the jury room and "the testimony of the DNA expert."
16 Maria is going to read that to you now.

17 (WHEREUPON, the requested portion of the record
18 is read by the court reporter)

19 THE COURT: You're dismissed to continue
20 deliberation.

21 (WHEREUPON, the jury exits the courtroom and the
22 following proceedings takes place before the Court as
23 follows:)

24 THE COURT: The jury's out of the room. The
25 door is closed. Folks, stick around for a little while.

1 (WHEREUPON, a recess is taken, after which the
2 following proceedings commence before the Court as
3 follows:)

4 COURT CLERK: This is 14153/2005 Enrique Rivera
5 who is present with counsel, the People are present, the
6 deliberating jury is not.

7 THE COURT: I have a document that is in front
8 of me. It's entitled Jury Note. The time is 4:40 p.m.
9 The date is 6/27/06. My name is stamped on the note.
10 It's been signed by the foreperson. It will be marked
11 Court Exhibit Number 14. I believe it's 14. The body of
12 the note reads --

13 COURT CLERK: Yes.

14 THE COURT: The body of the note reads as
15 follows "Your Honor, after five and a half days of much
16 discussion and review of the court exhibits and reading of
17 the court testimonies, opinions remain unchanged and we
18 cannot come to a unanimous decision." Counsel?

19 MS. CHU: Hang them.

20 MR. DRANOVE: Your Honor, I respectfully request
21 to inquire of the jury as to whether they are able to come
22 to a unanimous decision about any of the counts.

23 They have had an extraordinarily amount of time
24 and perhaps they have, and that, I believe, is, in all
25 fairness, something that is neutral and just that request

PROCEEDINGS

1 should be granted.

2 THE COURT: I'm going to read two sections of
3 the criminal procedure law Section 310.60 "Discharge of
4 Jury before Rendition of a Verdict and Effect Thereof"
5 Section 1A. In Section 1 "A deliberating jury may be
6 discharged by the Court without having rendered the
7 verdict only when (a) the jury has deliberated for an
8 extensive period of time without agreeing upon a verdict
9 with respect to any of the charges submitted and the Court
10 is satisfied that any such agreement is unlikely within a
11 reasonable time, (b) the Court, the defendant, and the
12 People all consent to such discharge, (c) a mistrial is
13 declared pursuant to Section 280.10."

14 Section 2 "When a jury is so discharged, the
15 defendant or defendants may be retried upon the
16 indictment. Upon such retrial, the indictment is deemed
17 to contain all counts which it contained, except those
18 which were dismissed or would deemed to have resulted in
19 acquittal pursuant to subdivision one of Section 290.10."

20 Section 310.70 deals with the Rendition of
21 Partial Verdict and Effect Thereof. "1. If a deliberating
22 jury declares that it has reached a verdict with respect
23 to one or more but not all of the offenses submitted to it
24 or with respect to one or more but not all of the
25 defendants, the Court must proceed as follows (a) if the

1 possibility of ultimate agreement with respect to the
2 other submitted offenses or defendants is so small and the
3 circumstances is such that if they were the only matters
4 under consideration the Court would be authorized to
5 discharge the jury pursuant to Paragraph A of subdivision
6 one, Section 310.60, the Court must terminate the
7 deliberation and order the jury to render a partial
8 verdict with respect to those offenses and defendants upon
9 which or with respect to whom it has reached a verdict,
10 (b) if the Court is satisfied that there is a reasonable
11 possibility of an ultimate agreement upon any of the
12 unresolved offenses with respect to any of the defendant
13 it may either --" I'm not going to read those two
14 sections, but it deals with continuing rendering a verdict
15 and continuing deliberation.

16 Subdivision two of 310.70 indicates as follows
17 "Following the rendition of a partial verdict pursuant to
18 subdivision one, the defendant may be --" and then it sets
19 forth what the defendant may do, the operative section,
20 and there's other sections or one other section dealing
21 with submitted offenses, what submitted offenses means,
22 but that doesn't really have any impact on what we have
23 before us.

24 Now, your request is to take a partial verdict.

25 MR. DRANOVE: No. To ask them if they've

1 reached a partial verdict to determine if there have been
2 a compliance with the very first subsection that you read
3 because you haven't asked the jury to report if they
4 reached an agreement upon a verdict upon any charge.

5 THE COURT: Just to show that I -- not only do I
6 disagree with you but you're wrong. I'm going to read
7 Section 310.70(1) again. "If a deliberating jury
8 declares --" and I don't think I could be more emphatic
9 than that. This jury has not declared --

10 MR. DRANOVE: Then ask them whether they have.

11 THE COURT: Counsel, would you please, don't
12 interrupt "--that it has reached a partial verdict with
13 respect to one or more but not all of the offenses, then
14 the Court must proceed in a specific way."

15 This jury has not under any aspect indicated
16 that it has declared that it has reached a verdict with
17 respect to one or any of the counts.

18 MR. DRANOVE: Your Honor, I submit that the jury
19 doesn't have a copy of the CPL nor anyone guiding them
20 what they are supposed to know -- what they're supposed to
21 do if they've reached a partial verdict.

22 A verdict would be through the end of the
23 verdict sheet, that's all, saying they cannot reach, I
24 believe, and I don't understand your resistance in asking
25 them if they reached a partial verdict.

PROCEEDINGS

1 If my client has or has not been acquitted of
2 one or two of the charges, he should know it, Your Honor
3 should know it, the People of the State of New York should
4 know it.

5 I don't understand the hesitation when they were
6 not asked by Your Honor to report as to whether or not
7 they've reached a partial verdict.

8 THE COURT: Counsel?

9 MS. CHU: Your Honor, I would agree with the
10 Court. I believe that the statute is quite clear that
11 it's only when a jury has indicated that they have reached
12 a partial verdict that the Court is to proceed in a
13 certain manner.

14 There have been no indications whatsoever during
15 the five and a half days that we've been with this jury
16 that they've reached a verdict on any of the counts that's
17 before them.

18 Not only that, they asked for all three of the
19 counts to be given to them in writing, which indicates
20 that they have not reached a verdict on anything, so I
21 believe that it would be outside the boundary of what the
22 Court is permitted to do to ask them a question of whether
23 they have reached anything.

24 THE COURT: Not only do I agree with you but by
25 submitting a question to the jury asking them whether they

1 can or have reached a partial verdict might imply to the
2 jury that the Court is suggesting that they do, and I have
3 no intention of doing that.

4 I don't want this jury to think that it's the
5 Court's impression that they should reach at least a
6 partial verdict, which would certainly be --

7 MR. DRANOVE: Your Honor --

8 THE COURT: -- certainly be an avoidance of
9 their duty in whole, and, secondly, it would be a
10 mischaracter of justice to the community in the sense that
11 I would be suggesting they have to reach at least some
12 form of verdict and I don't want to pressure them to think
13 that that would be the case. That's the fear of the Court
14 and that's why, counsel, your objection is obviously
15 noted.

16 MR. DRANOVE: Your Honor, do you actually
17 believe that inquiry of the jury as to whether they
18 reached a partial verdict is going to be anything more
19 than an inquiry as to whether they've reached a partial
20 verdict?

21 THE COURT: Yes.

22 MR. DRANOVE: I'm surprised you say so, Your
23 Honor.

24 THE COURT: In any event, I have no obligation
25 to ask that question. I have no indication from the jury

PROCEEDINGS

1 that they have reached a partial verdict in any way and
2 it's my intention to bring in the jury and to declare a
3 mistrial and dismiss this panel.

4 COURT OFFICER: Are you ready for the jury now?

5 THE COURT: Yes, please.

6 (WHEREUPON, the jury returned to the jury box
7 and the following proceedings takes place before the Court
8 and jury as follows:)

9 COURT CLERK: All 12 members of our deliberating
10 jury is now present. Both sides waive the reading of the
11 roll?

12 MS. CHU: Yes.

13 THE COURT: Counsel?

14 MR. DRANOVE: Yes.

15 THE COURT: Thank you. Now, I have a document
16 in front of me entitled Jury Note. The time is 4:30 p.m.,
17 the date is 6/27/06. It's been marked Court Exhibit
18 Number 14. My name is stamped to the document.

19 It's been signed by the foreperson again and the
20 body of the note reads as follows "Your Honor, after five
21 and a half days of much discussion and review of the court
22 exhibits and reading of court testimonies, opinions remain
23 unchanged and we cannot come to a unanimous decision."

24 I'm going to dismiss the panel at this time.

25 MR. DRANOVE: Would you ask them if they reached

1 a partial verdict, Your Honor?

2 THE COURT: Sit down, counsel. I'm going to
3 dismiss the panel at this time and before I do I'm going
4 to just take a few minutes to thank you for all your time.

5 I know this is a very, very difficult situation.
6 I know you didn't shirk your responsibility, and I know
7 you worked very, very hard. Sometimes these things are
8 very, very hard to do.

9 Thank you in any event for your time. You're
10 all excused.

11 (WHEREUPON, the jury exits the courtroom and the
12 following proceedings takes place before the Court as
13 follows:)

14 THE COURT: When is the next day --

15 MS. CHU: All right. Your Honor, the defense
16 counsel is asking the family members to go outside and try
17 and speak to the jury about partial verdicts.

18 THE COURT: The panel is dismissed.

19 MS. CHU: I think that what defense counsel did
20 during --

21 THE COURT: Was near contemptuous but the Court
22 is going to excuse his zeal, but if it should happen again
23 at any time in the future, the Court will not be so
24 lenient. We've --

25 MR. DRANOVE: Judge --

PROCEEDINGS

1 THE COURT: Counsel, we've discussed this. We
2 discussed this outside the earshot of the jury. The Court
3 made its determination. It was uncalled for, especially
4 someone with your professional reputation, your quality as
5 an attorney, you know better than to have done that.

6 MR. DRANOVE: Perhaps the more reason I have
7 that reputation is I take quite seriously, as you did,
8 sir, when you were representing your clients, and as all
9 in this courtroom who at one time did the need to
10 zealously represent their client.

11 THE COURT: That's why I haven't held you in
12 contempt for that contemptuous behavior.

13 In any event, I do understand your zeal,
14 counsel. I believe it was misplaced with that particular
15 outburst.

16 In any event, we're going to need a day to retry
17 this. What would be the most appropriate -- Both parties
18 have received the minutes. That's not going to be an
19 issue. We're going to move forward expeditiously.

20 MS. CHU: I have 2004 matter that's scheduled
21 for trial on July 18th. I'm going to be away the first
22 week of August. Sometime towards the end of August would
23 be fine with me.

24 MR. DRANOVE: Judge, I look forward to August
25 with one caveat. I have a firm date for federal trial on

PROCEEDINGS

1 September 11th, so -- He picked September 11th.

2 THE COURT: What about the July 5th?

3 MS. CHU: I'm going to be away that week.

4 THE COURT: When are you coming back?

5 MS. CHU: And I'm also riding the following week
6 after.

7 THE COURT: Can you change the riding situation?

8 MS. CHU: Everybody is pretty busy right now.

9 MR. DRANOVE: Judge, I'm extremely tied up with
10 Appellate Division deadlines.

11 THE COURT: No, I understand. The only point --
12 The only reason because you just told me your schedules.
13 I'm not going to be here the last two weeks of August, so
14 that creates a real problem. You're going to be here the
15 last two weeks of July -- the two weeks in July. You
16 can't do this and then the first week in August is not
17 good.

18 Mr. Dranove, you're going to be on trial again
19 September 11th, so that's putting us in a bit of a bind.
20 If we can't do it right away then we can't do it for
21 awhile.

22 MS. CHU: What about towards the middle to end
23 of September after he's finished with his federal trial?
24 I should be able to do another trial in between there and
25 then I should be done by maybe the third week of

1 September.

2 THE COURT: Counsel, Mr. Dranove?

3 MR. DRANOVE: Judge, I am consulting with my
4 client. If you give me a a moment more I'll respond.

5 (WHEREUPON, there is an off-the-record
6 discussion, after which the following proceedings takes
7 place before the Court as follows:)

8 THE COURT: How about the week of the 18th?

9 MR. DRANOVE: Of which month?

10 THE COURT: September.

11 MR. DRANOVE: Your Honor, I think all I would be
12 able to report then is that I'm in the middle of a trial.

13 THE COURT: I know that and that may be -- that
14 may be possible but there's always the possibility.

15 MR. DRANOVE: For control date so we --

16 THE COURT: What my intention is to have you try
17 this case right after that one.

18 MR. DRANOVE: Can I at least prepare for this
19 retrial. The fact that I've tried it once indicates
20 there's a voluminous amount to --

21 THE COURT: You did such a good job, I must add.

22 MR. DRANOVE: I beg your pardon?

23 THE COURT: You did such a good job at the first
24 trial. You seem to be well prepared already to move
25 ahead.

1 MR. DRANOVE: Thank you, Judge. I take that as
2 a compliment.

3 THE COURT: So why don't we just take the 18th.
4 Use that as the day for trial. If you're actually
5 engaged, you're engaged.

6 MR. DRANOVE: We have a two-week trial coming up
7 there --

8 THE COURT: Then you will be engaged.

9 MR. DRANOVE: -- in Mangano. My client has a
10 Somalian interpreter. The co-defendant's interpreter is
11 French.

12 It's going to be a very interesting trial and
13 supposedly two weeks, so then the 25th would be more
14 realistic.

15 THE COURT: Why don't we put it on for the 18th.
16 You'll have a good idea on the 18th when you'll be able to
17 try it. If you need a day or two in between, you will let
18 me know.

19 I'll be very, you know, happy to give you a
20 practice day or two, but we've already done it and we
21 already have the minutes and you have, you know, between
22 now and then it's not like we need any further
23 investigation; although, maybe you do.

24 MR. DRANOVE: I do, Your Honor, have a request.
25 It's for you to reconsider your prior decision denying my

1 application for the contact information for all of the
2 persons who were in the bar who did not see a knife in my
3 client's hand. A limited number spoke at this trial.
4 There are others who were in the bar. There are a
5 bartender and bartendress who was interviewed whose
6 contact information I don't have, particularly, in light
7 of the fact we've all sat through the trial and understand
8 the arguments.

9 I believe they are in deed exculpatory Brady
10 evidence material witnesses and there's been no indication
11 of why I should not be entitled to at least ask them if
12 they'd like to speak to me or my investigator. I renew my
13 application.

14 THE COURT: Counsel?

15 MS. CHU: Your Honor, I don't know which
16 witnesses he's talking about. The witnesses, as far as I
17 know, as far as the bartender and things alike, they
18 didn't see what happened, so whether or not they saw a
19 knife in his client's hands, I don't see how that would be
20 relevant.

21 MR. DRANOVE: Well, we've tried the case. I
22 don't have to reveal more of my trial strategy.

23 THE COURT: Were more DD-5's handed over to
24 counsel at trial unredacted?

25 MS. CHU: With the exception of the addresses,

1 yeah.

2 THE COURT: With the exception of the addresses
3 but all the names of all the witnesses?

4 MS. CHU: The names are all out there.

5 THE COURT: We're not talking about confidential
6 witness one, two, three up to six anymore.

7 MR. DRANOVE: But how do I contact them?

8 MS. CHU: That is why you have an investigator.

9 THE COURT: Yeah. That's why you have an
10 investigator. I'm not going to order them to turn over
11 the addresses of the witnesses; that is, I'm not going to
12 do it.

13 MR. DRANOVE: How about phone numbers? Let me
14 just confirm phone numbers with Ms. Chu because --

15 THE COURT: Counsel, I'm not going to order them
16 to turn over contact information.

17 Obviously, investigators have a lot of abilities
18 to contact people in this day and age. People who were in
19 the bar, I guess, or people who worked for the bar, if you
20 have their names, I don't see it should be much of a
21 problem.

22 MR. DRANOVE: Judge, we have a bouncer named
23 Bebe. How do I contact Bebe?

24 MS. CHU: Ask your client. He's the only one
25 who knows -- Ask Mr. Rivera. He's the only one who knows

1 about a Bebe.

2 MR. DRANOVE: Luis Rivera -- May I have Luis
3 Rivera's NYSID number from the prosecution because I'm
4 convinced they're not going to call him for the retrial,
5 and I would like the Court to sign an order to produce him
6 for the retrial.

7 THE COURT: Counsel, you get me an order to
8 produce and I'll sign it.

9 MR. DRANOVE: I will ask for the NYSID number
10 and his location to be provided to me by Ms. Chu.

11 MS. CHU: Your Honor, his client is
12 incarcerated. I would not want to have any incident occur
13 in jail while he knows the witness' NYSID number and where
14 he's actually held.

15 I refuse to give over that information under the
16 guise of, you know, we heard from that witness himself
17 that there were threats that were being put around that he
18 is a snitch and what have you when he actually testified.

19 MR. DRANOVE: Where did you hear that?

20 MS. CHU: From his attorney.

21 THE COURT: His attorney?

22 MR. DRANOVE: Oh, well, I'm not privy to any of
23 that.

24 THE COURT: Yeah, you were. You were actually
25 standing right here.

PROCEEDINGS

1 MR. DRANOVE: I didn't hear it.

2 THE COURT: Then you didn't hear it, but you
3 were standing right here.

4 Let the record reflect that I'm pointing to the
5 bench when he came up and told us.

6 MR. DRANOVE: I have -- I don't have that on the
7 record that I have and if --

8 THE COURT: No, it was not on the record. We
9 didn't put that on the record.

10 MR. DRANOVE: In any event, I want to call that
11 person to the witness stand. He's testified.

12 THE COURT: Counsel, my advice, and I really
13 shouldn't be giving you advice from the bench, but --

14 MR. DRANOVE: You're a learned jurist.

15 THE COURT: My advice to you would be to call
16 his lawyer and ask his lawyer for that information, and
17 I'm sure his lawyer will give it to you if he thinks it's
18 appropriate but he has a lawyer. Call his lawyer.

19 MR. DRANOVE: Is his lawyer's name in the
20 record? I don't --

21 THE COURT: I'm sure it is.

22 MR. DRANOVE: I will look for it. If it's not,
23 I will notify Your Honor. We can take --

24 THE COURT: We'll help you find his name.

25 MR. DRANOVE: Fine. Hold on a minute. Here it

1 is.

2 THE COURT: Mr. Quinn is the best. Step up. It
3 had just been discarded. I'm handing down Mr. Fredrick's
4 Legal Aid card to counsel.

5 MR. DRANOVE: Thank you.

6 THE COURT: And I guess you can contact Mr.
7 Fredrick and he'll help you out.

8 MS. CHU: Thank you.

9 THE COURT: Thank you both.

10 (WHEREUPON, proceedings adjourned to
11 September 18, 2006)

12 *--*--*--*--*--*--*

13 I hereby certify that the foregoing is a true and
14 accurate copy of the stenographic copy of the hearing held in
15 the above matter.

16 (Or trial as the case may be)

17
18 
19 Maria E. Gordon, R.P.R.
Official Court Reporter

20

21

22

23

24

25

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM: PT 35
-----X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

Ind. #1453/05

ENRIQUE RIVERA,

Murder 2

Defendant.

Sandoval Hrg
Voir Dire

-----X
320 Jay Street
Brooklyn, New York

May 4, 2009 and May 5, 2009

B E F O R E : HONORABLE ALAN MARRUS, presiding

A P P E A R A N C E S :

FOR THE PEOPLE: CHARLES HYNES, ESQ.
District Attorney - Kings County
210 Joralemon Street
Brooklyn, New York
BY: PHYLLIS CHU, ESQ.
Assistant District Attorney

FOR THE DEFT: JOEL DRANOVE, ESQ.
Brooklyn, New York

MICHELE J. WALKER
OFFICIAL SENIOR COURT REPORTER

Motions

2

1 COURT CLERK: Indictment 1453, 2005.

2 Enrique Rivera.

3 THE COURT: Counsel, your appearances,
4 please?

5 MR. DRANOVE: Joel Dranove, D-R-A-N-O-V-E,
6 for Mr. Rivera.

7 MS. CHU: For the office of the District
8 Attorney, Phyllis Chu.

9 Good afternoon, your Honor.

10 THE COURT: This case was sent to me for
11 trial.

12 Are the People ready?

13 MS. CHU: Yes, your Honor. The People are
14 ready.

15 THE COURT: Is the Defense ready?

16 MR. DRANOVE: Yes, your Honor.

17 THE COURT: Then we move the case for
18 trial.

19 Mr. Rivera, I'm Judge Marrus, and I'm the
20 judge that has been assigned to try your case.

21 THE DEFENDANT: Good afternoon.

22 THE COURT: Good afternoon.

23 Before we commence jury selection, I want
24 to resolve all matters that need to be
25 resolved. So let's start with the prosecution.

Motions

3

1 Is there any ruling that you need from me
2 before jury selection commences?

3 MS. CHU: Your Honor, I would just ask
4 that there is one detective that is no longer
5 available. He is retired, and we have tried
6 several attempts at trying to locate him
7 through his pension address and he has been
8 unable to be located. That detective's name is
9 Detective James O'Sullivan. For that reason,
10 your Honor, this detective testified at the
11 prior trial in 2006, before Judge Collini, and
12 pursuant to CPLR, I believe, Section 670,
13 People would be seeking to introduce his prior
14 testimony in its entirety because of his
15 unavailability.

16 THE COURT: Is there any objection by the
17 Defense?

18 MR. DRANOVE: I have a question which --
19 with respect to the efforts to locate the
20 detective.

21 Was anybody sent to his last known address
22 to find out if he actually lives there?

23 THE COURT: Miss Chu, what efforts were
24 made to locate him?

25 MS. CHU: I sent two letters to his

Motions

4

1 address, as well as one certified letter to
2 him.

3 The first two letters were sent regular
4 mail because sometimes when you send certified,
5 it delays them actually being able to get it.

6 I also had a detective actually go to the
7 location. The detective informed me that when
8 he arrived there, there were no cars in the
9 driveway. And it did not appear as though
10 anyone lived in the house. All the lights were
11 out. I don't recall what time of the day it
12 was. But it did appear -- I'm sorry -- that
13 there were computer checks that were done for
14 this detective, and that is a legitimate
15 address for him. However, it didn't appear as
16 though anyone was residing in the apartment --
17 I'm sorry -- the address that was listed on his
18 pension information.

19 MR. DRANOVE: I wonder, have the pension
20 checks been cashed? Have they been returned to
21 The City? If they're being negotiated, then
22 that's his address.

23 Might be insufficient showing.

24 THE COURT: Miss Chu?

25 MS. CHU: I have no idea. I believe

Motions

5

1 there's some sort of privacy issues having to
2 do with his pension checks. I'm not sure we
3 can find out his finances whether or not he's
4 cashing checks.

5 The efforts that I made to try and locate
6 Detective O'Sullivan, I believe, are
7 sufficient. To establish that he has been --
8 that we have been unable to locate him. I
9 don't believe that going into pension checks
10 and finding out that information, I don't know
11 where we have the authority to do that.

12 THE COURT: Now, you said you sent two
13 letters, and one was -- you also sent a
14 certified --

15 MS. CHU: I also did send a certified
16 letter. That has not been picked up. To date.

17 I sent one letter, I believe, beginning of
18 March. The second letter was sent the
19 beginning of April. Then I sent the certified
20 letter, I think, about a week or two ago. And
21 I have not heard anything back. He has not
22 called.

23 I also asked detectives from his original
24 command, Crime Scene Unit, to try and reach out
25 to him, and they also have been unsuccessful in

Motions

6

1 trying to reach him.

2 THE COURT: Was the certified letter
3 return receipt requested?

4 MS. CHU: Certified so that he has to sign
5 for it, and we would know, whoever signed for
6 it, that he got it.

7 I have not received anything saying
8 anybody picked up the letter at all.

9 THE COURT: Well, it seems pretty clear
10 that, you know, the People have made a
11 reasonable effort to locate this detective and
12 to get in touch with him by sending him
13 numerous letters, including one certified and
14 by sending a detective investigator out to his
15 last known address. It would appear to me that
16 this does satisfy the statutory requirements
17 that the witness is unavailable to testify at
18 this trial. And given the fact he was fully
19 cross-examined, and the same counsel that was
20 involved in that trial, I don't really see any
21 prejudice to the defense regarding the scope of
22 his testimony.

23 So I'll allow the People to perpetuate his
24 prior testimony from the first trial at this
25 trial. And that the testimony will be read

Antommarchi

7

1 from the transcript that was certified by the
2 court reporter from the first trial.

3 Is there any other matter that the People
4 need a ruling on before jury selection
5 commences?

6 MS. CHU: Not at this time.

7 THE COURT: Mr. Dranove, do you need a
8 ruling from me on anything?

9 MR. DRANOVE: No.

10 But I want the record to reflect that
11 there will come a time when jury questioned and
12 there may be a possibility that a juror may
13 want to speak in confidence to The Court and
14 counsel and my client would have a right, under
15 the People versus Antommarchi case, to be
16 present and I will discuss with him the
17 possible decisions to be made and report back
18 to The Court.

19 THE COURT: Well, I want to discuss one of
20 those issues right now.

21 When we pick the jury, I expect everything
22 to be on the record, and everything obviously
23 will be in open court. However, every once a
24 while there is a juror who does not want to
25 answer a question asked by someone publicly.

Antommarchi

8

1 And I want to know if that is going to be okay
2 with your client if the juror wants to speak to
3 me privately, with you and the DA present? But
4 not him.

5 MR. DRANOVE: I will let you know before
6 the questioning starts, your Honor. Whether my
7 client wants to be present.

8 My recollection of the last trial is that
9 we did not include my client, but that is three
10 years ago. I am not certain I am accurate in
11 that regard.

12 THE COURT: Well, it's probably an
13 academic issue. In my part, the last juror
14 that asked to speak to me privately was over a
15 year ago. That is the last I can remember, the
16 way I conduct jury selection.

17 However, there is possibility, if that
18 happens, I need to know whether to tell the
19 jury yes or no that the juror can speak to me
20 privately or not.

21 All right, now there is a Sandoval
22 application that has to be done before trial.
23 I am looking at a criminal history sheet. That
24 indicates the defendant has a youthful offender
25 adjudication in 1992 for Criminal Possession of

Sandoval

9

1 a Weapon in the Third Degree, a felony
2 conviction for Attempted Robbery in the Second
3 Degree in 1993 and a felony conviction for
4 Criminal Sale of a Controlled Substance in the
5 Third Degree in 1998. After that I only see a
6 violation for harassment in 2004, which I won't
7 allow any cross-examination about since it's
8 violation. Are you aware of any other criminal
9 record that your client has, Mr. Dranove, in
10 this or any other jurisdiction?

11 MR. DRANOVE: No, sir.

12 THE COURT: And Miss Chu, are there any
13 other bad acts, outside of this criminal
14 history, that you would propose to
15 cross-examine the defendant about if he takes
16 the stand?

17 MS. CHU: I am not aware of any other
18 prior bad acts other than what is listed on the
19 rap sheet.

20 THE COURT: Mr. Dranove, I will hear you
21 on this why I shouldn't allow the DA to ask
22 your client about these criminal convictions,
23 specifically the two felonies.

24 MR. DRANOVE: I think that the 1993 felony
25 apparently the layperson and others would

Sandoval

10

1 consider a crime of violence. The indictment
2 charges alternate violence as we know it. And
3 it's an old, if not very old, conviction. I
4 think the combination of the age of it and the
5 fact that it's a violent crime, is such that it
6 would prejudice the jury so that it would not
7 be able to compartmentalize that this is just a
8 criminal conviction, not indication of the
9 defendant's nature.

10 And as to the other felony, the sale of
11 drugs. I think it's not relevant to this crime
12 whatsoever and nonviolent and now 11 years old.

13 My client has been in jail for sometime,
14 of course. I think that the jury should hear
15 the witness, whether it's my client or another,
16 not have felony conviction in their mind as
17 they wonder what to make of that felony
18 conviction. He's a felon, why should I believe
19 him?

20 So I am asking not to allow the
21 prosecution to question my client with respect
22 to the '92 youthful offender case or the '93
23 attempted robbery or the '98 sale of a
24 controlled substance. Third degree.

25 THE COURT: Miss Chu?

Sandoval

11

1 MS. CHU: Yes, your Honor.

2 I believe that the defendant was
3 incarcerated during that time period for four
4 years. I believe he was committed in 1998, he
5 did not get out until 2002. So four of those
6 years he had spent incarcerated. So,
7 therefore, it would toll the time under which,
8 as far as the distance between 1992 or 1993
9 until the present time.

10 Obviously, he has been incarcerated since
11 he was arrested on this case in 2005. Your
12 Honor, I believe that would obviate the
13 argument, or negate the argument, that it's too
14 remote as far as that's concern. As far as
15 time wise is concerned.

16 The People would not only like to inquire
17 of the defendant, should he take the stand,
18 regarding those convictions, but of the
19 underlying fact which are on the first case of
20 the attempted robbery in the second degree. He
21 was arrested on October 7th, 1992, and on
22 October 7th, 1992 the allegations, or the
23 facts, or the underlying facts, of that case
24 were that 5:10 p.m., in front 615 Mill Street,
25 the defendant accosted a delivery person and

Sandoval

12

1 demanded money. When the victim refused,
2 defendant took out a knife and put it to the
3 victim's throat and goes through his pockets
4 and takes out money. The defendant was
5 apprehended based upon a point-out to the
6 police, and that resulted in the attempted
7 robbery in the second degree conviction, which
8 resulted in the five year probation as a
9 sentence.

10 In addition to that, your Honor the
11 attempted sale of a controlled substance in the
12 third degree conviction that he received in
13 October of 1998, the underlying facts are that
14 June 9 of 1997, at 1:10 p.m., the defendant,
15 along with an apprehended other person by the
16 name of Edward Irrizary, were approached by an
17 undercover officer, and the undercover who had
18 first approached the apprehended other, was led
19 to the defendant who was inside of 11 Bush
20 Street. Once the defendant saw the undercover
21 come over he opened the door to the building and
22 reached over the door and got red glassines and
23 asked the undercover how many he wanted. When
24 the undercover asked for a dime, the defendant
25 even clarified that they were actually nickel

Sandoval

13

1 bags. So he handed him one more glassine. So
2 he got two glassines when the undercover gave
3 him \$10 of pre-recorded buy money. At the time
4 of the defendant's arrest, he was found in
5 possession of buy money, as well as matching
6 stash to the drugs that were sold to the
7 undercover.

8 And while the defendant was out on bail in
9 that case, he actually fled to Puerto Rico. He
10 had to be extradited back to the United States.

11 The People would seek to inquire of the
12 defendant, not only of the convictions, but of
13 the underlying facts.

14 With regard to the robbery conviction, I
15 understand that in this case he also had a
16 knife. However, there is case law, I believe
17 it's Rahming, that holds that a defendant
18 should be allowed to use, if he uses the same
19 m.o. on cases to use that as a shield to
20 prevent him from being cross-examined should he
21 take the stand. And although he did brandish
22 the knife in that case and alleged to have used
23 the knife in this case, he can use that as a
24 shield anymore to prevent himself from being
25 questioned regarding that.

Sandoval

14

1 So, for all those reasons, the People
2 would ask that we be allowed to ask about not
3 only the convictions, but the underlying facts.

4 MR. DRANOVE: May I respond?

5 THE COURT: You may.

6 (pause)

7 THE COURT: Go ahead.

8 MR. DRANOVE: I am starting to recommend
9 similar arguments last time. I remind Miss
10 Chu, as I informed her last time, one doesn't
11 get extradited from Puerto Rico, it's actually
12 part of the United States. I think the last
13 time she called it another country.

14 And this is not a similar m.o. case. With
15 respect to an attempted robbery. This is just
16 about a frightful incident, and the decedent,
17 argument apart from that, already has been
18 placed before your Honor.

19 THE COURT: Balancing the factors which I
20 must, I'll allow the People to ask the
21 defendant two questions if he takes the stand:

22 The first is, on October 7th, 1998, were
23 you convicted of a felony? On October 7, 1998,
24 were you convicted of a felony?

25 And the second question is, on

Sandoval

15

1 September 3rd, 1993, were you convicted of
2 another felony? On September 3rd, 1993 were
3 you convicted of another felony?

4 If he truthfully answers those two
5 questions a yes, that will bar any further
6 questioning about the crimes or the underlying
7 facts.

8 If he were to deny that he was convicted,
9 or try to explain or mitigate them in any way
10 beyond a yes answer, that will open the door to
11 cross-examination about what the crimes were
12 and any underlying facts.

13 MS. CHU: That brings me to my next
14 application.

15 During the last trial, the defense -- I am
16 sorry. The Court ruled, similarly with your
17 Honor, with respect to the facts that I could
18 question the defendant, should he take the
19 stand, whether he was convicted of a felony.
20 During that time, during Sandoval ruling on the
21 prior case, the court admonished counsel, that
22 means you're not allowed to ask the defendant,
23 you know, you pled guilty on those cases and
24 therefore you're testifying on this, so,
25 therefore, implying to the jury that somehow

Sandoval

16

1 you pled guilty because you were guilty in
2 those cases and you're only testifying on this
3 case because you're, in fact, innocent on this
4 case.

5 Despite those admonitions to the defense
6 counsel, the defense counsel asked the
7 defendant, and he testified during the prior
8 trial that, yes, he had pled guilty on those
9 prior cases, and he says this is the first time
10 that he was actually testifying on this case.
11 On any case that he had ever had. So I made an
12 application, and although the court's decision
13 agreed, I felt that that crossed the line and
14 that opened the door for me to be able to ask
15 him about the underlying facts of those
16 felonies.

17 Now I am asking The Court, because of the
18 fact that this has happened before when we
19 tried the case before, that again Defense be
20 admonished or warned that they are not to try
21 and imply to this jury, or suggest to this
22 jury, that the only reason why he is testifying
23 now is because he's, in fact, innocent, when he
24 took those pleas on other cases it was because
25 they guilty on those cases. I think it's an

Sandoval

17

1 unfair picture to paint to the jury. It's
2 unfair to the justice system. I think that
3 that should not be allowed.

4 THE COURT: Mr. Dranove. If you're not
5 going to ask that question at this trial, I
6 think it's my application --

7 MR. DRANOVE: I will not ask that question
8 at this trial.

9 THE COURT: All right. So it's clear the
10 question is simply, were you convicted of a
11 felony each time? If yes is the answer, and
12 that's it. Nothing else about this. All
13 right. We've got to keep it at that level.

14 Any other explanation or comment about it
15 is going to be viewed as a violation of my
16 ruling.

17 MR. DRANOVE: This raises an issue which
18 I'd like to address.

19 THE COURT: All right.

20 MR. DRANOVE: If my client testifies, I
21 imagine he may be cross-examined with respect
22 to prior testimony he's given. Does The
23 Court -- does The Court yet have any idea what
24 it might instruct the jury with respect to why
25 it is that we're hearing --

Sandoval

18

1 THE COURT: It's common when there is a
2 retrial, there may be a lot of witnesses who
3 are questioned about their prior testimony.
4 And so counsel are instructed to refer their
5 questions to, "at a prior proceeding." And not
6 use the word "trial." "You remember testifying
7 at a prior proceeding" and then going forward
8 and asking the question, and answer now was at
9 that time, keep it at that level. I don't
10 think there's any prejudice to anyone in saying
11 that there was some sort of prior proceeding at
12 which people gave an account. I think that is
13 the best way to handle it, and, of course, I
14 would instruct counsel to admonish your
15 witness, prosecution witnesses or defense
16 witnesses, that they are not to mention that
17 there was a prior trial when they testified.
18 It's conceivable that a witness might volunteer
19 that information in response to some question,
20 and they need to be told before they testify,
21 whatever you say, don't refer to the fact that
22 you were previously here at another trial or
23 gave testimony at another trial. They are not
24 to say that to avoid any possible prejudice.

25 All right, now is there any other matter

Sandoval

19

1 that you need a ruling from me on at this time,
2 Mr. Dranove?

3 MR. DRANOVE: No.

4 THE COURT: So before we recess, I just
5 want to make it clear in terms of a plea
6 situation. That the District Attorney has
7 informed counsel for the defendant, and myself,
8 that the DA is not offering any plea down from
9 the top count, which is murder. Therefore, the
10 scope of sentence that is available for a plea
11 is 15 to life to a maximum of 25 to life.

12 Based on what I know about this case, if
13 the defendant wanted to take a plea now, I
14 would offer him the minimal sentence, which is
15 15 years to life, and if he doesn't want to
16 take that, and from what I heard I don't expect
17 him to, then he needs to be aware that he faces
18 the risk of a sentence of up to 25 years to
19 life after trial.

20 So I am sure you have explained that to
21 him, Mr. Dranove?

22 MR. DRANOVE: I have.

23 THE COURT: Is there any interest in that
24 plea?

25 THE DEFENDANT: No, sir.

Sandoval

20

1 THE COURT: I am just telling you, not
2 because I want you to take a plea, but because
3 it's important that you understand the risk
4 that you take in going to trial.

5 You face an exposure of a sentence of up
6 to 25 years to life. Noone knows what a jury
7 will do. So you're taking that risk. I just
8 want you to understand that.

9 Okay, we will recess until tomorrow for
10 jury selection. I will ask counsel to be here
11 at ten o'clock.

12 We're going to put 20 jurors in the box,
13 and they are numbered 1 through 10 in the front
14 row. Eleven through 20 in the back row.
15 You'll have fifteen minutes per round for your
16 questioning. After we pick a jury tomorrow,
17 and then the People are to be ready to open and
18 proceed with the People's case on Wednesday.

19 Have a good day.

20 * * * *

21 (Adjourned to May 5, 2009)
22
23
24
25

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PT 35

-----x

3 THE PEOPLE OF THE STATE OF NEW YORK

4 - against -

Ind. #1453/05

5 ENRIQUE RIVERA,

Murder 2

6 Defendant. Voir Dire

7 -----x

8 320 Jay Street
9 Brooklyn, New York

10 May 5, 2009

11 B E F O R E: HONORABLE ALAN MARRUS, presiding

12 (Appearances same as previously noted)

13
14 MICHELE J. WALKER,
15 OFFICIAL SENIOR COURT REPORTER

16 THE COURT: Before we bring the jurors in,
17 is there anything you want to put on the
18 record, Mr. Chu?

19 MS. CHU: Yes, your Honor, I do have an
20 application for The Court. Actually, I have
21 two things I want to do.

22 Yesterday he spoke to you about the
23 witnesses we would be calling during trial.
24 This time on the retrial. I just wanted to set
25 forth there were -- there were six people that

Proceedings

22

1 viewed the line-up in this case. Four of
2 whom -- one of whom did not make an
3 identification. Three of whom did. The two
4 that did are Rudy Cordova and Jahaira Serrano.
5 Third person was a person by the name Julio
6 Rivera. We do not intend to call Rudy Cordova
7 and Jahaira Serrano. In light of the fact,
8 based upon the statements given to detective as
9 well as statements given, oral sworn
10 statements, given to the District Attorney's
11 office, they were later interviewed at the
12 prior trial. Just while we were in the middle
13 of trial. And based upon their statements,
14 they were, in effect, recanting what they had
15 told us before and they were saying that they
16 didn't see what they said they saw and they
17 were not going to testify the way they had told
18 us things that happened because they say now
19 they couldn't remember. For those reasons, I
20 am not going -- seeking to put on Cordova or
21 Mr. Serrano in light of the fact I did not
22 believe them, and I do not believe the People
23 have an obligation -- I actually do not have an
24 obligation, but I cannot put on a witness who I
25 think would be perjuring themselves at trial.

Proceedings

23

1 And which I would think they would be doing if
2 they were to tell me something different than
3 what they already told me in a sworn statement.

4 In addition, that there was a Luis Rivera
5 that testified the last trial. He also gave
6 statements to the detectives, and when they
7 testified at the trial, he did not identify the
8 defendant as touching anybody where he -- as he
9 did give that to his statement to the police.

10 In addition to that, I had an intern in
11 the courtroom who advised me that after the
12 defendant -- I am sorry -- after the witness,
13 Mr. Rivera, had gotten off the stand, he had
14 winked at the defendant because essentially
15 what he had testified was just that the
16 defendant had gotten punched and that was all
17 he had seen, which is contrary to what he had
18 said to the police at the time that he was
19 interviewed. For that reason, your Honor,
20 again, I would not be seeking to call
21 Mr. Rivera as a witness in this case.

22 The second issue that I'd like to raise
23 before The Court was that on the -- at the
24 trial, the defendant testified on his own
25 behalf, and during the testimony of the

Proceedings

24

1 defendant there was several articles of
2 clothing that were referred to by the
3 detectives at his parent's home. They were --
4 they fit the description of what the defendant
5 was wearing at the time of the incident and
6 they were vouchered and sent to the DNA lab for
7 testing. Subsequent to being sent for testing,
8 the hat that was recovered at his mother's
9 house was found to have blood on it that
10 belonged to Mr. Ojeda, the victim in this case.
11 The People seek to introduce a portion of the
12 defendant's prior trial testimony relating to
13 the fact that he admitted on the stand that
14 those items of clothing were what he was
15 wearing that night when he was at the bar on
16 the night in question. We seek to introduce
17 that through the court reporter as direct
18 evidence on our evidence case. There is
19 two-prong test to be done in order to elicit
20 only a portion of a trial testimony or prior
21 proceedings testimony. And while it is true
22 we're not permitted to introduce only the
23 portion of the statement where it would be
24 misleading, the People's position is that it
25 would not be misleading. That actually

Proceedings

25

1 admission of the clothing is separate and apart
2 from what he testified to at the trial, which
3 is that basically he was just there and he
4 didn't do anything. And that would be
5 exculpatory. The other is just self-serving
6 statement.

7 The second test under the rules is an
8 issue of completeness. And the People's
9 position is that his admission of what he was
10 wearing is independent of his claims that he
11 did not actually stab the victim in this case.
12 The People would direct The Court's attention
13 to two cases. People versus Harris, 249 A.D.
14 2nd, 775. That is a Third Department case.
15 And People versus Jones, 203, A.D. 2nd, 183.

16 In People versus Harris, the court held
17 that it was proper for the People to introduce
18 a portion of the grand jury testimony without
19 the remainder because the omitted points -- I
20 am sorry -- the omitted parts were not
21 extricably intertwine nor did they create a
22 false presentation to the jury. The court held
23 that there was no basis to allow the defendant
24 to bolster his trial testimony by introducing
25 earlier self-serving denials of culpabilities.

Proceedings

26

1 In People versus Jones, the court in that
2 case held that the introduction of only the
3 inculpatory portion of the grand jury testimony
4 was proper since the People had no obligation
5 to introduce the defendant's exculpatory
6 statements because they were self-serving and
7 not extricably intertwined with the inculpatory
8 statement.

9 So, in essence, the People are asking that
10 these inculpatory statements made by the
11 defendant at the time of the prior trial
12 relating to the clothing that we will be
13 putting into evidence be allowed to be brought
14 out by the court reporter who is going to be
15 testifying in this case with regard to
16 Detective James O'Sullivan's testimony.

17 THE COURT: Do you have the portion of the
18 testimony in the transcript for me to review?

19 MS. CHU: I did not bring that with me,
20 but I can have that for you as soon as I go
21 back to my office or actually call my paralegal
22 and have her bring it over.

23 THE COURT: We are about to pick jury, I
24 can't review it right now.

25 Obviously you need to show Mr. Dranove the

Proceedings

27

1 actual portion of the transcript that you
2 intend to use.

3 Mr. Dranove?

4 MR. DRANOVE: I'd like to know if the
5 prosecution can cite any case authority where
6 trial testimony, not grand jury testimony, is
7 the subject? They've only cited the two cases
8 where grand jury testimony was chosen also with
9 respect to three witnesses. Prosecution may
10 think they're not speaking of truth. But that
11 may be because their truth is the truth and it
12 doesn't fit their theory. I'd like to be able
13 to contact these people. I don't have any
14 phone numbers for them. I don't know how to
15 contact them.

16 Thirty-six months after -- 35 months after
17 the last trial, I suddenly hear that there was
18 a wink in the courtroom from an unknown trial
19 assistant. I think that is a meaningless
20 statement. I'd like to know how I can contact
21 these people. I think they're, at minimum,
22 able to present evidence that is favorable to
23 the defense and I'd like an opportunity to
24 reach them.

25 I appreciate the prosecutor honoring her

Proceedings

28

1 commitment and letting the court know, although
2 about two weeks ago I wrote to the prosecution
3 and asked her any favorable evidence, and she
4 wrote back saying, I complied with all rights.
5 I can bring that letter in.

6 I don't know when the prosecutor learned
7 that three witnesses are not favoring the
8 prosecution in this case at this time, and
9 Mr. Rivera -- by the way, Judge, if I remember
10 correctly, was the bouncer on duty that night?
11 And I don't know how to reach these people.
12 The bar is closed. Because there is another
13 homicide in that bar, my client was on Rikers
14 Island at the time. So I don't know how to
15 reach Mr. Rivera. Or the other individuals.

16 MS. CHU: Well, your Honor --

17 THE COURT: Wait. I am a little surprised
18 to hear this being raised and discussed in this
19 case at this time.

20 First of all, one of the witnesses, you
21 just said, testified at the previous trial, and
22 then you said that witness didn't give the
23 testimony that you had expected at the trial.
24 Isn't that what you said?

25 MS. CHU: Yes.

Proceedings

29

1 THE COURT: So as far as that witness is
2 concerned, there is nothing new to report. You
3 already heard that witness' account at the
4 time. At the trial. You knew years ago what
5 that witness said. That is no surprise. And
6 she now, now in light of this thing with the
7 wink, is totally irrelevant to that issue as
8 far as that witness is concerned. She doesn't
9 intend to call him based on the testimony he
10 gave at the prior trial.

11 Now, as to the other two witnesses, I
12 believe what she said was that they have
13 recanted their prior testimony, basically,
14 saying they didn't see what they had originally
15 told the police they said they saw. Which
16 probably makes them useless witnesses for
17 anyone. But as far as contact information is
18 concerned.

19 MS. CHU: Jahaira Serrano and his counsel
20 and that their boyfriend, Mr. Cordova --

21 THE COURT: If you have any contact
22 information regarding a telephone number or
23 whatever, I would ask you to provide that. To
24 Mr. Dranove. If he wants to speak to these
25 people.

Proceedings

30

1 MS. CHU: Just in response to his letter,
2 he was given statements that were made by
3 Mr. Rudy Cordova, Mr. Jahaira Serrano. He was
4 given all relevant statements. Audio-taped
5 statements. DD5. Grand jury testimony of all
6 these witnesses. So had all --

7 MR. DRANOVE: Except --

8 MS. CHU: Documents that I have.

9 MR. DRANOVE: Except the statements where
10 they said, I didn't tell the truth earlier.
11 Those statements are apparently not recorded or
12 preserved in any summation at all. I don't
13 know. I am not trusting Miss Chu to be able to
14 have a hundred percent recall of what these
15 witnesses stated.

16 THE COURT: She'll give you the contact
17 information. But it's my experience that based
18 on what the recommendation is, these witnesses,
19 having given sworn statements and then having
20 inconsistent statements after that, make them
21 problematic as witnesses for either side to
22 call at this trial. But I should think you
23 should get the contact information so you can
24 speak to them yourself.

25 MR. DRANOVE: Does that include

Proceedings

31

1 Mr. Rivera?

2 MS. CHU: I'll give whatever contact
3 information I have for Mr. Rivera as well.

4 MR. DRANOVE: Right away.

5 MS. CHU: I'll give it to you as soon as I
6 get back to my office.

7 MR. DRANOVE: Thank you very much.

8 THE COURT: Now, as far as the other part
9 of her application, regarding the testimony of
10 the defendant at the prior trial. Again, to me
11 this sounds like something that may be somewhat
12 of a moot issue since there was apparently a
13 dispute at the last trial that the defendant
14 acknowledged that he was at the bar the night
15 this happened and didn't dispute the fact that
16 the clothing was his. The only issue is the
17 legal issue as to whether or not you should be
18 allowed to introduce this on your direct case
19 through his transcript. What you need to do is
20 to provide the exact portion of the trial that
21 you propose to introduce. Let Mr. Dranove
22 review it, and then I will hear any objection
23 that he may have as to the completeness or
24 incompleteness of that part of the account that
25 you propose to offer at this trial. Since it's

Proceedings

32

1 very fact specific to your application when it
2 comes to completeness.

3 MR. DRANOVE: Your Honor, perhaps you
4 could include that portion of the testimony
5 where my client had been told to take the hat
6 off, and he said he did take it off and he put
7 it back on. He took it off. And there is no
8 doubt from the trial testimony that at least
9 one or more law enforcement officers went to
10 the client's mom's apartment and took the
11 clothing from there. I don't know how many
12 nails they have to put in that coffin, but I'll
13 address it when I have the opportunity then.

14 THE COURT: Right. I am saying what you
15 need, and I am ordering the DA to supply to
16 you, is their proposed portion of the testimony
17 that they want to introduce on their direct
18 case. And then if you have an objection to
19 that as being incomplete or misleading, I'll
20 hear your objection, then I'll make my ruling.
21 But I can't do that until I see what they
22 propose to introduce.

23 THE COURT: Is there anything else before
24 we bring the jurors in?

25 MS. CHU: No.

Jury Selection

33

1 THE COURT: Mr. Dranove?

2 MR. DRANOVE: No, sir.

3 THE COURT: Okay. We will wait the
4 arrival of the jurors.

5 (pause)

6 COURT OFFICER: Your Honor, ready for the
7 panel?

8 THE COURT: Yes, we are.

9 COURT OFFICER: Jury panel entering.

10 COURT CLERK: Will the prospective jurors
11 stand up and raise your right hand, please?

12 (Whereupon, the prospective jury panel was
13 duly sworn at this time.)

14 THE COURT: Good morning, ladies and
15 gentlemen: My name is Judge Alan Marrus, and
16 you are here in Part 35 of the Supreme Court
17 for the trial of a criminal case. I'd like to
18 introduce to the you parties to this trial.

19 Representing the People of the State of
20 New York is Assistant District Attorney Phyllis
21 Chu.

22 Miss Chu.

23 MS. CHU: Good morning. Good morning.

24 THE COURT: The defendant on trial in this
25 case is Mr. Enrique Rivera.

Jury Selection

34

1 Mr. Rivera, be good enough to stand up.

2 THE DEFENDANT: Good morning. Good
3 morning.

4 THE COURT: His attorney, representing him
5 at this trial, Mr. Joel Dranove.

6 MR. DRANOVE: Good morning.

7 THE COURT: Anyone knows the defendant,
8 Mr. Rivera, his attorney, Mr. Dranove, the
9 district attorney, Miss Chu or myself? Just
10 raise your hand to let me know.

11 Now, some other people who may be involved
12 with this case, who are not here today, I will
13 read their names. If you think you know
14 anyone, just raise your hand to let me know.

15 Edgar Ojeda, Matthew Ojeda, Raymond
16 Classen, Carlos Solomon, Jonathan Dominguez,
17 Marcus Carrasquillo, Rudy Cardova, Luis Rivera,
18 Edwin Carpio, Angel Rodriguez, Kimberly
19 Tapia-Mendez, Enrique Navarette, Gloria Vale,
20 Patricia Glasglow, Jahaira Serrano, William
21 Arrufat, Molly Schloemer, Angel Rivera, Julio
22 Rivera, Anna Cassalas, Jennifer Sipress, Yon
23 Paul Casalouc, Judith Brusca, Justin Harriman,
24 Police Officers Zambrano, Chi Shing Bao,
25 Acosta, Lopicollo, Garda. Detective John

Jury Selection

35

1 Darino. Hector Rivera and James Gaynor.
2 Detectives David Cruz and Michael Cunningham,
3 James O'Sullivan. Detective Deborah Kennedy.
4 Doctor Frede Frederic. Linda Razzano. And
5 Tito Rivera. Do any of those names ring a bell
6 with anyone?

7 I am going to tell you a little something
8 about this case that we are about to try: The
9 People of the State of New York are alleging
10 that on February 27, 2005, at a bar located at
11 314 39th Street, in the Sunset Park section of
12 Brooklyn, the defendant committed the crime of
13 murder. Specifically the charges are that on
14 that date, February 27, 2005, at that location,
15 314 39th Street, a bar called El Borinquen Bar,
16 the defendant stabbed to death a man name Edgar
17 Ojeda.

18 Now, those are the charges in this case.
19 That is all they are, charges. Under the law,
20 the defendant is presumed innocent of these
21 charges, and it will be the burden of the
22 district attorney to prove his guilt by proof
23 beyond a reasonable doubt.

24 Is there anyone who feels you cannot
25 follow the rules that the defendant is presumed

Jury Selection

36

1 innocent and it is the district attorney who
2 has the burden of proof to prove his guilt by
3 proof beyond a reasonable doubt? Anyone have a
4 problem with those rules?

5 Is there anyone that feels you don't
6 understand English well enough to serve as a
7 juror? Can you all understand me?

8 THE JURORS: Yes.

9 THE COURT: Anyone have a problem with
10 that so far?

11 If you do, just raise your hand to let me
12 know if you don't understand anything. Don't
13 be ashamed to let me know.

14 Is there anyone that feels you have a
15 health problem that would prevent you from
16 serving? Such as you cannot hear or some
17 problem like that.

18 Yes, ma'am? You want to raise your hand?

19 THE JUROR: Yes.

20 THE COURT: No reason for you to walk
21 anywhere. Stay there.

22 THE JUROR: My mother was murdered in
23 November, 2008?

24 THE COURT: Go over to the clerk, I can
25 see you're very upset. Sorry about that.

Jury Selection

37

1 As far as the health question is
2 concerned. Does anyone feel you have a health
3 problem, such as you cannot hear, that would
4 prevent you from serving? You're all the
5 healthy like me?

6 I hope so.

7 Now, this is a criminal trial. We need
8 jurors who will make a decision. That decision
9 will either be guilty or not guilty. Is there
10 anyone who feel you can't make that decision
11 because of religious or personal beliefs?

12 Yes, ma'am?

13 THE JUROR: I might have a problem with
14 that.

15 THE COURT: You can't do that?

16 THE JUROR: Yes.

17 THE COURT: Go over to the clerk.

18 John, please mark her card, send her for
19 civil.

20 THE COURT: Yes, ma'am? We'll send you
21 for a civil case. Those are the longer trials.

22 (Juror Excused)

23 Let me go over with you the schedule for
24 this trial. If you are selected to serve.

25 We will work on the trial the rest of this

Jury Selection

38

1 week. Today is Tuesday. So you would have to
2 return here the rest of this week, Wednesday,
3 Thursday and Friday for the trial. And, of
4 course, we will not work on the weekend. And
5 you have to return next week, and this trial
6 will be completed by the end of next week. We
7 expect to get the case for it's decision
8 probably by Wednesday of next week. But you
9 have to be able to serve next week. And the
10 schedule, in terms of time, would be you would
11 never have to be here before ten o'clock in the
12 morning. We don't start before ten. And you
13 would never have to be here pass five o'clock.
14 We never work pass five. And if I can get you
15 out of her earlier, that may work too some
16 days. But that is the schedule for the trial.
17 If you have a problem with that, please let me
18 know by raising your hand.

19 On this side, yes, ma'am? What is your
20 problem?

21 THE JUROR: I am diabetic, I have to have
22 my meals in between.

23 THE COURT: You just bring it here with
24 you. We can use the refrigerator. If you need
25 it, you can have it at any time. That would be

Jury Selection

39

1 no problem for us. We can certainly handle
2 that.

3 Anyone else over here on this side? Yes,
4 sir?

5 What about as far as schooling?

6 THE JUROR: I am excused from school or
7 excused from college.

8 THE COURT: When you're on jury duty,
9 you're excused from any place. But if you
10 don't want to be here because you want to go to
11 school, then you have to postpone your jury
12 duty to when you're not in school.

13 I understand the students get a lot of
14 time off during the year, you will have plenty
15 of time to serve on a jury when you're off. If
16 you don't want to be here because of class, I
17 will excuse you, but you wouldn't get credit
18 for your jury service. You'll be postponed to
19 another time.

20 THE JUROR: I would like to postpone it.

21 THE COURT: Go over to clerk, you have to
22 come back again.

23 John, a postponement for college.

24 (Juror Excused)

25 Anyone else on this side? Nobody here on

Jury Selection

40

1 this side?

2 Let's start, second row, yes, ma'am?

3 THE JUROR: Surgical procedure I have to
4 go back and have --

5 THE COURT: I am sorry?

6 THE JUROR: I have to have stitches
7 removed following surgical procedure. I am
8 scheduled for that next week.

9 THE COURT: If you're picked for the jury,
10 let us know. We will make sure you can get
11 your stitches removed. That is not going to be
12 a long-term thing. We will work that out with
13 you.

14 Yes, ma'am.?

15 THE JUROR: I speak English a little but
16 --

17 THE COURT: You understand me?

18 THE JUROR: A little bit, yes.

19 THE COURT: Have I said anything that you
20 don't understand?

21 THE JUROR: 50/50.

22 THE COURT: If I tell you, you go over to
23 the clerk, that is a hundred percent.

24 (Juror Excused)

25 If someone is going to tell me they don't

Jury Selection

41

1 understand 50 percent, I can't argue with the
2 person. It is what it is.

3 Who else in the next row? Yes, ma'am?

4 THE JUROR: I have a trip scheduled to
5 leave the country next week.

6 THE COURT: If you're picked, I get to use
7 your tickets because I need a vacation.

8 Go over to the clerk, give him your name.

9 (Juror Excused)

10 THE COURT: Who else? Yes, sir?

11 THE JUROR: I have a scheduling conflict
12 for tomorrow at 2:30. I have a job interview.

13 THE COURT: If you're picked for the case,
14 I'll contact, if necessary, whoever it is you
15 have an interview to make sure you get the
16 interview. They can't deny you that because
17 jury duty is an important obligation. You'll
18 get your job interview. You have to let us
19 know if you're picked. Make sure you remind me
20 before you leave, if you're selected, about
21 that. Thank you.

22 Who else?

23 THE JUROR: I need postponement for
24 school.

25 THE COURT: Go over, give your name to the

Jury Selection

42

1 clerk.

2 Isn't it final examine time?

3 THE JUROR: Yes.

4 THE COURT: In the back row, yes?

5 THE JUROR: I have to go to school.

6 THE COURT: You need to postpone and go
7 study. Go over to the clerk.

8 How people come in during final examine
9 time for jury duty? I don't know.

10 Anyone else in the row over here?

11 Let's go to the jury box. Yes, ma'am?

12 THE JUROR: Only thing -- only problem I
13 need to have access to my cell phone. You
14 know, in case -- only thing in case a certain
15 number comes up because my mother's in a
16 nursing home. And she's like this right now.

17 THE COURT: When we are working on the
18 trial, obviously, we don't have cell phones on
19 in the courtroom. We give you a phone number
20 where someone can call the courtroom at any
21 time. If that will work for you. In case of
22 an emergency. We'll give you a number, someone
23 can get through at any time.

24 THE JUROR: No problem then.

25 THE COURT: You we will still be able to

Jury Selection

43

1 have your telephone. But right now you can't
2 call on your cell phone. I hope it's off.

3 THE JUROR: Oh, yes, it is.

4 THE COURT: Someone else? Who else? Yes,
5 sir.

6 THE JUROR: I have a flight scheduled next
7 Wednesday.

8 THE COURT: We don't want to give -- go
9 over to the clerk and give him your name.

10 (Juror Excused)

11 THE COURT: Anyone else in the jury box?
12 Yes, sir?

13 THE JUROR: Your Honor, I got a work
14 problem. It'll be a little difficult for me.

15 THE COURT: Tell us who's going to --

16 THE JUROR: I can't do that, but will be
17 little rough, not impossible, but they are long
18 days. Two or three long days.

19 THE COURT: Again, what I suggest you do,
20 postpone your jury duty to when --

21 THE JUROR: I can do that.

22 THE COURT: Go over and give him your
23 name.

24 (Jury Excused)

25 THE COURT: Anyone else in the jury box

Jury Selection

44

1 that I missed? Noone else?

2 All right, we are ready to move to the
3 next process. Here's how we are going to work
4 it. The clerk is going to select your names,
5 randomly picking your cards out of a wheel he
6 has on his desk. If he selects your name, I
7 ask you to take a seat in the jury box.

8 Once we fill the box with jurors, I am
9 going to ask each of you a few questions about
10 yourselves. And then the attorneys get a brief
11 opportunity to ask you some questions also.

12 Now, why are we going to ask you
13 questions? We are looking for people who can
14 be fair and impartial. To both sides. So,
15 please, try to answer the questions that you
16 are asked as honestly as you can. If at any
17 time you feel embarrassed about something or
18 you don't want to answer something in front of
19 the whole group, if that is a problem, just let
20 me know. We are not looking to embarrass you.
21 We are looking for certain information to pick
22 a jury.

23 When your name is called, take your
24 belongings, come up to the jury box, one of our
25 court officers will tell you where to sit.

Jury Selection

45

1 I am going to ask you to step out of the
2 jury box. You can fill in the seats in the
3 gallery when they become available.

4 COURT CLERK: Dorothy Jean Baptiste.
5 J-E-A-N-B-A-P-T-I-S-T-E; Alyson Gill, G-I-L-L;
6 Knita Artis, A-R-T-I-S; Michael Pabon,
7 P-A-B-O-N; Staphen Chance, C-H-A-N-C-E; Carl
8 Beard, B-E-A-R-D; Crystal Rodriguez,
9 R-O-D-R-I-G-U-E-Z; Glendon Britton,
10 B-R-I-T-T-O-N; Yuwnus Warner, W-A-R-N-E-R;
11 Benjamin Proffer, P-R-O-F-F-E-R; Denise
12 McCarthy, M-C-C-A-R-T-H-Y; Mary Jones,
13 J-O-N-E-S; Cara Howe, H-O-W-E; Marlon Antigua,
14 A-N-T-I-G-U-A; Nigel Jeremiah, J-E-R-E-M-I-A-H;
15 Victor Sutton, S-U-T-T-O-N; Kerrianne McGowan,
16 M-C-G-O-W-A-N; Lisa Constantine,
17 C-O-N-S-T-A-N-T-I-N-E; Lorraine LaPera,
18 L-A-P-E-R-A; Andrew Steininger,
19 S-T-E-I-N-I-N-G-E-R.

20 THE COURT: Those that weren't selected
21 for this round, please pay attention because
22 probably you'll get your term very shortly. It
23 will go a lot faster if you follow what we are
24 doing.

25 Those over here in the jury box, I am

Jury Selection

46

1 going to ask that you tell us one at a time the
2 neighborhood in Brooklyn in which you live,
3 your marital status, or if you're in a
4 committed relationship with someone, what kind
5 of work, if any, you are doing at the present
6 time.

7 We are going to start with you Miss Jean
8 Baptiste. What part of Brooklyn you live in?

9 THE JUROR: Canarsie.

10 THE COURT: Your marital status?

11 THE JUROR: Single.

12 THE COURT: Are you working?

13 THE JUROR: Yes.

14 THE COURT: What kind of work do you do?

15 THE JUROR: Sales associate.

16 THE COURT: What kind of business?

17 THE JUROR: Abercrombie & Fitch.

18 THE COURT: Thank you.

19 Next we have Miss Gill, you want to tell
20 us about yourself, please?

21 THE JUROR: I live in Boreum Hill I am
22 married and I'm an attorney.

23 THE COURT: I am sure the attorneys would
24 like to know what kind of legal work you
25 specialize in?

Jury Selection

47

1 THE JUROR: Criminal.

2 THE COURT: Do you do criminal defense
3 work?

4 THE JUROR: I work for the Attorney
5 General. Prosecution.

6 THE COURT: What unit?

7 THE JUROR: Federal Habeas Corpses section.

8 THE COURT: Next we have Miss Artis. Tell
9 us about yourself?

10 THE JUROR: I live in Flatbush. Brooklyn.
11 I'm single, and I work in the Department of
12 Social Services.

13 THE COURT: What kind of work do you do
14 there?

15 THE JUROR: I work on Medicaid.

16 THE COURT: Thank you.

17 Mr. Pabon is next.

18 THE JUROR: Yes, your Honor.

19 I live in Boreum Hill. I'm single. And
20 I'm self-employed. I'm a carpenter.

21 THE COURT: Thank you, Mr. Pabon.

22 Next up, Mr. Chance.

23 THE JUROR: I live in the Midwood section
24 of Brooklyn. I'm married. And I'm retired.

25 THE COURT: In what line of work did you

Jury Selection

48

1 do, Mr. Chance?

2 A I work for New York City Department of
3 Sanitation.

4 THE COURT: Are you enjoying your
5 retirement?

6 THE JUROR: Yes, I am.

7 THE COURT: Thank you very much.

8 Next up, Mr. Beard?

9 THE JUROR: I'm single. I live in Bedford
10 Stuyvesant, and I work for the New York City
11 Police Department.

12 THE COURT: What kind of work do you do
13 there?

14 THE JUROR: Police officer.

15 THE COURT: Where are you assigned?

16 THE JUROR: The Bronx.

17 THE COURT: Thank you very much.

18 Next up we have Miss Rodriguez.

19 THE JUROR: Bushwick, Brooklyn. Single.
20 I'm a student. I am not working right now.

21 THE COURT: What are you studying?

22 THE JUROR: Criminal Justice.

23 THE COURT: Thank you very much.

24 You can make it through this trial?

25 THE JUROR: Sure.

Jury Selection

49

1 THE COURT: Miss Britton is next.

2 I live in Crown Heights section. Married.

3 I'm home attendant.

4 THE COURT: Thank you very much.

5 Next up, Mr. Warner.

6 THE JUROR: I live in Bedford Stuyvesant,
7 Brooklyn. I'm telephone technician, and I am
8 single.

9 THE COURT: Thank, Mr. Warner.

10 Move on next to Mr. Proffer.

11 I live in Crown Heights. I am single, and
12 I'm freelance writer.

13 THE COURT: What kind of things do you
14 write about?

15 THE JUROR: Travel writing. Mostly.

16 THE COURT: Thank you very much.

17 Now we move to the back row, Miss
18 McCarthy.

19 THE JUROR: Sheepshead Bay. Married. And
20 semi-retired. I am a substitute teacher.

21 THE COURT: Thank you, Miss McCarthy.

22 Next up we have Miss Jones.

23 THE JUROR: I live in Bay Ridge. I am
24 single, and I work for the Met Correctional
25 Center, Manhattan.

Jury Selection

50

1 THE COURT: Are you a corrections guard
2 there?

3 THE JUROR: I am certainly investigator.

4 THE COURT: Thank you, Miss Jones.

5 Next we have Miss Howe.

6 THE JUROR: I live in Williamsburg. I am
7 single. And I am a freelance photographer.

8 THE COURT: Thank you, Miss Howe.

9 Move over next to Mr. Antigua.

10 THE JUROR: Bushwick. Single. I'm a
11 Principal Administrator Associate for the New
12 York City --

13 MR. DRANOVE: I am sorry?

14 THE COURT: Principal Administrator
15 Associate for the New York City Parks
16 Department.

17 Now, move on to Mr. Jeremiah.

18 THE JUROR: I live in East Flatbush.
19 Married. Carpenter for construction.

20 MS. CHU: I didn't hear the last part.

21 THE COURT: Works for construction company
22 as a carpenter.

23 THE COURT: Thank you, Mr. Jeremiah.

24 Mr. Sutton?

25 THE JUROR: Married. Flatbush Avenue,

Jury Selection

51

1 Brooklyn. Self-employed real estate investor.

2 THE COURT: Next up, Miss McGowan.

3 THE JUROR: Hi. I am single. I work
4 customer service for University Music. I live
5 in East New York.

6 THE COURT: Move over to Miss Constantine.

7 THE JUROR: I live in Flatbush. I am
8 single, and I work in financial industry.

9 THE COURT: Next up, Miss Lopera?

10 THE JUROR: I am single. I work in
11 Department of Education. I am oral translator,
12 which is I work with the child with Coeklar
13 implant in a high school. And I have been
14 working with her since third grade. She reads
15 my lips, and I take her notes for her.

16 THE COURT: Thank you, Miss Lopera.

17 Next up, Miss Steininger.

18 THE JUROR: I live in Prospects Heights.
19 Single. Work for the borough president.

20 THE COURT: What kind of work do you do
21 for the --

22 THE JUROR: I work on his capital budget.

23 THE COURT: Can we get some more money for
24 the court system?

25 THE JUROR: I'll call him up and ask him.

Jury Selection

52

1 THE COURT: Thank you very much, Mr.
2 Steininger.

3 I have a few more questions each. To save
4 time, I am going to ask you all at once. If
5 the answer is yes, just let me know.

6 First, I'd like to know if you ever been
7 on a jury in a criminal or federal trial or if
8 you were on a grand jury? If you were actually
9 own a jury, just let me know.

10 I see five hands for follow-up.

11 Mr. Pabon, about how long ago were you on
12 a jury?

13 THE JUROR: Approximately eight years ago,
14 I believe, your Honor.

15 THE COURT: Was it a criminal or civil
16 trial?

17 THE JUROR: It was a criminal trial.

18 THE COURT: Did the jury reach a verdict?

19 THE JUROR: Yes, we did.

20 THE COURT: You remember the crime that
21 was involved?

22 THE JUROR: Yes, I do.

23 THE COURT: Was it murder, drugs, robbery,
24 assault?

25 THE JUROR: It was murder.

Jury Selection

53

1 THE COURT: Thank you.

2 Mr. Chance, about how long ago for you?

3 THE JUROR: Approximately eight years ago,
4 little longer.

5 THE COURT: You remember what kind of case
6 it was?

7 THE JUROR: I think it was a civil.

8 THE COURT: Civil case?

9 THE JUROR: Yeah.

10 THE COURT: Did the lawyer settle before
11 you reached a verdict or --

12 THE JUROR: They settled.

13 THE COURT: I think I got everyone in the
14 front row. I'll move back to Mrs. McCarthy.

15 THE JUROR: I think it was five years ago.
16 Five, six years ago.

17 THE COURT: What kind of --

18 THE JUROR: Criminal, and it was assault.

19 THE COURT: Did the jury reach a verdict?

20 THE JUROR: Yes.

21 THE COURT: Thank you.

22 Miss Constantine?

23 THE JUROR: It was civil, over six years
24 ago. And they settled.

25 THE COURT: Miss Lopera?

Jury Selection

54

1 THE JUROR: It was civil, and I don't
2 remember how long ago it was.

3 THE COURT: Did they reach a verdict or
4 did they --

5 THE JUROR: No, we reached a verdict.

6 THE COURT: Anyone else that I missed?
7 Next question.

8 I have already heard that there is one
9 member of our group working for the police
10 department. Anyone ever -- who we haven't
11 heard -- who ever worked for the police
12 department, the DA's office, the court system
13 or someone in your immediate family who ever
14 worked for those agencies?

15 Miss Gill?

16 THE JUROR: I work for the Brooklyn DA.
17 The Queens DA, and my husband work for the
18 Brooklyn Queens DA.

19 THE COURT: Anyone else.

20 THE COURT: Miss Pabon?

21 THE JUROR: My father served 26 years with
22 the NYPD, and he was retired approximately ten
23 years ago. And he died of cancer last year.

24 THE COURT: Thank you. Sorry about that.
25 Anyone else ever worked for law

Jury Selection

55

1 enforcement agency or someone in your family?

2 My brother is a detective in Jacksonville,
3 Florida.

4 THE COURT: Anyone else?

5 Because this is a criminal case, the
6 police are involved. The police are involved
7 in every criminal trial. We will hear
8 witnesses from the police department, and when
9 they testify, we treat them the same way we
10 treat all of the other witnesses. Police
11 officers are just like anyone else when it
12 comes to be witnesses. They can tell the
13 truth. They can be mistaken. They can lie.
14 Anyone that has a problem being completely fair
15 and impartial when it comes to police
16 witnesses?

17 Mr. Beard, I guess I have to ask how do
18 you feel about sitting as a juror and having to
19 judge police officer testimony. Do you think
20 you can be completely fair about that?

21 THE JUROR: Yeah.

22 THE COURT: Or you'll have an issue? No
23 problem?

24 THE JUROR: No problem.

25 THE COURT: How about you, Miss Gill?

Jury Selection

56

1 THE JUROR: No problem.

2 THE COURT: Next question. Anyone who's
3 been a victim of a crime or someone in your
4 immediate family who may have been the victim
5 of a crime?

6 Miss Britton?

7 THE JUROR: My husband was accused of
8 assault on my son.

9 THE COURT: About how long was that?

10 THE JUROR: The case finished, it was
11 dismissed March of this year.

12 THE COURT: Here in Brooklyn?

13 THE JUROR: Yes.

14 THE COURT: Did you come down to court on
15 the case?

16 THE JUROR: No, it was just resolved.

17 THE COURT: Anything about the experience
18 of your husband and your son that is going to
19 create a problem to be a fair juror?

20 THE JUROR: Yes because he was arrested
21 unfairly.

22 THE COURT: You can return to the central
23 jury room, Miss Britton. Go downstairs.

24 (Juror Excused)

25 THE COURT: Who else has been the victim

Jury Selection

57

1 of a crime or someone in your family?

2 Mr. Proffer? Someone tried to rob you?

3 THE JUROR: Ah-huh.

4 THE COURT: Your house or you personally?

5 THE JUROR: Me personally.

6 THE COURT: Was anyone ever caught?

7 THE JUROR: No.

8 THE COURT: Does that experience create a
9 problem for you to be a fair juror?

10 THE JUROR: (Indicating)

11 THE COURT: Anyone else in the front row?
12 Back row, Miss Constantine.

13 THE JUROR: Robbery. Apartment. It was
14 over five years ago.

15 THE COURT: Here in Brooklyn?

16 THE JUROR: Yes.

17 THE COURT: Did you report it?

18 THE JUROR: Yes.

19 THE COURT: Anyone ever caught?

20 THE JUROR: No.

21 THE COURT: Miss McGowan.

22 THE JUROR: Yes, my aunt was murdered.

23 THE COURT: Here in Brooklyn?

24 THE JUROR: No.

25 THE COURT: Where?

Jury Selection

58

1 A This is another state.

2 THE COURT: About how long ago?

3 THE JUROR: Over ten years ago.

4 THE COURT: Police ever caught anyone in
5 this case?

6 THE JUROR: Not that I know.

7 THE COURT: Regarding your aunt, would
8 that create a problem for you to be a fair
9 juror?

10 THE JUROR: I will be all right.

11 THE COURT: Anyone else? Victim of a
12 crime? Noone else?

13 Substitute this seat?

14 COURT CLERK: Alan Chu. C-H-U.

15 THE COURT: Take the empty seat there, Mr.
16 Chu.

17 You want tell us about yourself, please?

18 THE JUROR: I forgot three questions.

19 THE COURT: You weren't paying attention
20 out there?

21 THE JUROR: It was long time ago.

22 THE COURT: I need to know what part of
23 Brooklyn you live, marital status or
24 relationship, what kind of work you do?

25 THE JUROR: Live in downtown Brooklyn. I

Jury Selection

59

1 am married. And I work as CPA.

2 THE COURT: I am paying attention, you
3 have a job interview tomorrow?

4 See, I remember what you said. I am doing
5 better than you.

6 Have you ever been on a jury before?

7 THE JUROR: No.

8 THE COURT: Do you have any relationship
9 to anyone that works for the police department,
10 the DA's office or the court system?

11 THE JUROR: No.

12 THE COURT: Can you be fair when it comes
13 to police witnesses?

14 THE JUROR: Yes.

15 THE COURT: Any experience being a victim
16 of a crime in your family?

17 THE JUROR: Yes.

18 THE COURT: Who was that?

19 THE JUROR: It was me. It was a burglary,
20 my apartment, over ten years ago.

21 THE COURT: Did you report it?

22 THE JUROR: Yes, I did.

23 THE COURT: Anyone ever caught?

24 THE JUROR: No.

25 THE COURT: I am finished with my

Jury Selection

60

1 questions for you.

2 One more question for anyone else. Anyone
3 had the experience that the other -- one of the
4 other jurors mentioned about being arrested for
5 something or convicted of something in your
6 family. An experience we also need to know.

7 Someone on this jury ever been arrested or
8 convicted of anything? Please raise your hand
9 to let me know.

10 Start in the front row. Miss Rodriguez?

11 A My brother and my uncle. My brother was
12 arrested and convicted with three felonies for armed
13 robbery. And my uncle served 15 years state prison
14 I don't know what it was for.

15 THE COURT: Was it here in Brooklyn,
16 relatives or someplace else?

17 THE JUROR: Yeah, in Brooklyn.

18 THE COURT: Did you ever go to court on
19 any of their cases?

20 THE JUROR: No.

21 THE COURT: Did you ever hear anything
22 about their cases that would create a problem
23 for you to be a fair juror?

24 THE JUROR: No.

25 THE COURT: Thank you for letting us know.

Jury Selection

61

1 Yes, ma'am.

2 THE JUROR: My brother, he was -- he did
3 time. I am not sure what for, at the time I
4 was young. It happened in Brooklyn. He served
5 time upstate.

6 THE COURT: Nothing you heard about that
7 would create a problem for you to be a juror?

8 THE JUROR: Uh-uh.

9 THE COURT: Anyone else?
10 Miss Lopera?

11 THE JUROR: My nephew was in jail in
12 Riverhead. For robbing someone's house.

13 THE COURT: Did you ever go to court on
14 his case.

15 THE JUROR: No, I never went to the court,
16 but I felt as he should have been in rehab
17 instead --

18 THE COURT: Anything what you heard about
19 that case create a problem for you to be a fair
20 juror?

21 THE JUROR: No.

22 THE COURT: Anyone else?

23 All right, I am finished with my
24 questions, and I am now going to give the
25 attorneys a chance to talk to you. We start

Jury Selection

62

1 with the DA.

2 Miss Chu, would you like this board?

3 MS. CHU: No.

4 THE COURT: Would you like the table
5 opened up?

6 MS. CHU: I can do it.

7 Good morning, ladies and gentlemen:

8 My name is Phyllis Chu, and I will be the
9 assistant district attorney that handles this
10 case should you be selected as jurors.

11 Now, the first thing I want to talk to you
12 about is what the judge was saying as far as
13 really what we are looking for honest answers.
14 There are no wrong answers when we ask these
15 questions because really now is the only time
16 that we get to exchange with you and ask you
17 for your opinions or your feelings on certain
18 issues that may come up during the course of
19 this trial. So don't anybody think, oh, she
20 wants us to say certain things. No attorney
21 wants you to say something that's not the
22 truth. Whatever the feelings are, that is what
23 we want to hear, okay, and also we are not
24 trying to pry.

25 Judge says if you have feelings that make

Jury Selection

63

1 you uncomfortable at all, anything, just let us
2 know. We will be able to discuss that in
3 private.

4 First thing I want to talk to you about is
5 the fact that there's a lot of things on TV now
6 a days. There are a bunch of shows about the
7 criminal justice system, about police officers,
8 about a lot of Law and Orders, CSI. I am
9 guilty, like everybody else, of watching all
10 those things because there are almost on every
11 channel.

12 You all understand that this is not TV.
13 This is not something where the witnesses are
14 going to come up here, and they are going to
15 testify from a script. There is no commercials
16 here. It's not going to be wrapped up in an
17 hour. Can you all appreciate this live
18 testimony, these people are going to be coming
19 up here and telling you that on a particular
20 day they were at a particular place and they
21 saw something? They are going to tell you
22 about it. That is considered to be evidence.
23 Can you all except that?

24 THE JUROR: Yes.

25 MS. CHU: The spoken word is considered to

Jury Selection

64

1 be evidence just like if we give you something
2 in your hand to hold, like physical evidence,
3 or photos. Can you all appreciate that?

4 THE JURORS: Yes.

5 MS. CHU: Now what I want to talk to you
6 about next. Do you think if more than one
7 person views any occurrence at the time,
8 they're going to have the same account of what
9 happened?

10 THE JUROR: No.

11 MS. CHU: Why do you think that is?

12 THE JUROR: Because everybody sees things
13 different certain cases. Every person don't
14 think alike.

15 MS. CHU: Do you also think when someone
16 tells somebody what they saw, what they
17 experienced, that they are going to express
18 themselves the same way that the person next to
19 them is going to express themselves?

20 THE JUROR: No.

21 MS. CHU: You all are individuals. When
22 you guys were answering questions the judge
23 just posed to you, you all answered in your own
24 little way. Would you all agree with that?

25 THE JURORS: Yes.

Jury Selection

65

1 MS. CHU: Do you think that would affect
2 how people describe something?

3 THE JURORS: Yes.

4 MS. CHU: Just because people -- there is
5 possible some people seen one thing and maybe
6 see something else but not necessarily going to
7 see exactly the same thing. Can you all
8 appreciate that that might happen?

9 THE JUROR: Yes.

10 MS. CHU: Now along the lines of that. Do
11 you also think that if someone tells somebody
12 what happened that they are going to say it the
13 same way every time?

14 THE JUROR: Not at all.

15 MS. CHU: Have you ever told an occasion
16 what happened to you, later you think, I forgot
17 to tell them about this part, right?

18 And vice versa, you tell them something at
19 the beginning, and when you say it again, you
20 might forget what you mentioned before. Would
21 you all agree that might happen? Do you think
22 that necessarily means you are not telling the
23 truth?

24 THE JUROR: No.

25 MS. CHU: Do you think you're the kind of

Jury Selection

66

1 person to distinguish what is important and
2 what is not important? Big inconsistency
3 versus little inconsistency. Can you do that
4 in this case?

5 THE JUROR: Yes.

6 The next thing I want to talk to you about
7 is how many people think they know what
8 circumstantial evidence is? Big word. You see
9 things on TV.

10 I wanted to give you an example. You're
11 wearing a white shirt. Right? You don't know
12 me. I come up to you, and I tap you. And as
13 soon as I do that, you see there is a red
14 marker across your shirt.

15 MR. DRANOVE: Your Honor, I object to
16 that.

17 THE COURT: So far it's okay.

18 MR. DRANOVE: Can we approach?

19 THE COURT: No reason to approach. Let me
20 hear the question.

21 What is the question?

22 MS. CHU: So my question to you. If you
23 didn't see what was in my hand, would you be
24 able to conclude that I had a marker in my hand
25 because I just made a streak on your shirt?

Jury Selection

67

1 THE JUROR: Yes.

2 MS. CHU: Even though you didn't see the
3 marker.

4 You may hear evidence in this case that
5 witnesses did not see a weapon, but there will
6 be other evidence to show that there was a
7 weapon used. Anyone here have a problem with
8 the fact that these witnesses cannot have seen
9 the weapon? Anybody here have a problem with
10 that? No?

11 Can you think of a reason why someone
12 might not see a weapon, like a knife or a sharp
13 object or something like that?

14 MR. DRANOVE: I object to this.

15 THE COURT: I will sustain the objection.
16 That gets too fact specific to our case.

17 Let's move on.

18 MS. CHU: Are you -- does anyone here
19 disagree that if someone didn't see an actual
20 weapon that you would have a problem, you
21 wouldn't be able to --

22 MR. DRANOVE: Objection.

23 THE COURT: Again, it's too fact specific.
24 I will sustain the objection.

25 MS. CHU: In this case, there are

Jury Selection

68

1 allegations that a knife was used in this case.
2 There was never a knife recovered or a weapon
3 recovered in this case. Anyone here that
4 feels -- I'm sorry, I am going to withdraw
5 that.

6 Will be other evidence to show that there
7 was a weapon, such as a knife, used, but you
8 won't actually get to see that knife. Is there
9 anyone here that thinks I need to see that kind
10 of evidence before I can decide a case like
11 this?

12 MR. DRANOVE: I object to this.

13 THE COURT: That's a hard question for
14 jurors to answer.

15 MS. CHU: I ask do you have the problem
16 that a knife wasn't recovered in this case?

17 MR. DRANOVE: I object again.

18 THE COURT: They don't know enough about
19 the case to know it's a problem.

20 MS. CHU: Your Honor, may we approach?

21 THE COURT: No, there no reason to
22 approach.

23 MS. CHU: If you heard that there wasn't a
24 knife recovered, would you have a problem
25 deciding this case without a --

Jury Selection

69

1 MR. DRANOVE: I repeat any objection.

2 THE COURT: I sustain the objection.

3 MS. CHU: All right, I will move on to
4 something else.

5 You may hear from witnesses in this case
6 that have criminal histories. All right. Now,
7 is there anyone here that feels that if someone
8 has a criminal history that they couldn't -- I
9 am being extreme here -- that they couldn't
10 believe what they have to say? That they
11 wouldn't even listen to what they had to say to
12 see whether or not he makes sense, what is the
13 other evidence that you're going to hear in
14 this case? Would anyone have anybody have a
15 problem listen -- at least listening to them?

16 THE JURORS: No.

17 MS. CHU: You cannot listen to anybody
18 that is going to testify that has a criminal
19 history?

20 THE JUROR: No.

21 MS. CHU: You can't have a open mind?
22 Give them a fair listen?

23 Do you agree, convicted of a crime or not
24 or whether there was police officers, that you
25 have to make your own determination as to

Jury Selection

70

1 whether or not they're telling the truth?
2 Would you agree with that? And would you be
3 able to do that in this case?

4 THE JURORS: Yes.

5 MS. CHU: Now, along the lines of that.
6 There will be police officers that testify in
7 this case. And we have a number of people
8 here, we heard the gentleman that left, he said
9 he does something with law enforcement. Lot of
10 different types of jobs we have. We have a
11 police officer, we have a substitute teacher.
12 You know, can you all appreciate that it's not
13 fair to judge the whole by just one? So I may
14 have substitute teacher that was all -- I may
15 have a substitute teacher that was terrific,
16 but I can't say all substitute teachers are
17 terrific or awful. Just based upon one
18 experience. Can you all do that in this case
19 and give each of the witnesses, whether they're
20 police officers or not, whether they have
21 criminal history or not, a fair listen to just
22 see if what they say makes sense and connect it
23 with other evidence in this case? Can you all
24 do that?

25 THE JURORS: Yes.

Jury Selection

71

1 MS. CHU: Now, next thing I want to talk
2 to you about is the fact that you may hear
3 evidence in this case that the defendant made
4 certain statements. Is there anyone here that
5 feels that it's possible that a person who is
6 being questioned by the police officer would
7 make statements would even talk to the police?
8 Do you think that is possible?

9 THE JURORS: Yes, it's possible.

10 MS. CHU: Do you think someone being
11 spoken to by the police that it's possible that
12 they might say something that would be in the
13 best interest for them?

14 MR. DRANOVE: Objection.

15 THE COURT: Overruled. I'll allow it.

16 THE JUROR: Yes.

17 MS. CHU: Put them in the best light?

18 THE JUROR. Yes.

19 MS. CHU: I'm not saying that is what
20 happened. I am just saying, do you think it's
21 possible?

22 THE JURORS: Yes, it is possible.

23 MS. CHU: Now, are you the type of people
24 that if you're chosen as jurors in this case
25 that can distinguish between what might be

Jury Selection

72

1 truthful, what might not be truthful and
2 compare and contrast the other evidence that
3 you're going to get?

4 THE JURORS: Yes.

5 MS. CHU: Anyone here that says, you know
6 what, I am not so good at that? Would it be
7 fair to say that you all make judgments
8 everyday about whether or not someone is
9 telling you the truth?

10 THE JUROR. Yes.

11 MS. CHU: You have people that you work
12 with. Anybody work with someone you don't
13 really like them so much. They tell you a
14 story, and when they tell you what happened,
15 and this is goes for whether someone's making a
16 statement, goes for witnesses as well. But
17 what they are telling you, whether you like
18 them or not, if what they're saying makes sense
19 or doesn't make sense. You make that judgment
20 everyday. Yes?

21 THE JUROR: Yes.

22 MS. CHU: You can do that in this case,
23 yes?

24 THE JURORS: Yes.

25 MS. CHU: Now, there is a burden of proof,

Jury Selection

73

1 and I have that burden of proof. Can everybody
2 here promise me that you're going to hold me to
3 the burden of proof that the judge tells you I
4 have to prove. All the things that I have to
5 prove, you're going to hold me to that? Yes?

6 THE JURORS: Yes.

7 MS. CHU: On the flip side, there are
8 certain things that I don't have to prove.
9 Like I don't have to prove motive.

10 MR. DRANOVE: I am going to object this
11 area.

12 THE COURT: Overruled. I'll allow it.
13 Ask the question.

14 MS. CHU: Does anyone here -- I am sorry.
15 Does everyone here promise me that you all also
16 will not hold me to a higher burden to what the
17 judge is going to tell you my burden is? You
18 will not?

19 Also there's something I want to talk to
20 you about is the judge is going to give you
21 instructions as to the fact that sympathy for
22 the victim, for the defendant has no place in
23 your deliberations in this case.

24 Is there anyone here that thinks, by
25 looking at the defendant, that there is

Jury Selection

74

1 something about him or anything about the way
2 he looks that would prevent you from deciding
3 this case solely on the evidence? Because now
4 is really the time that you have to tell us.
5 Because obviously if you're selected as jurors,
6 it will be too late.

7 Anybody here feel that, you know, based
8 upon your experiences, what you hear in the
9 criminal justice system, you might have
10 something else to affect your abilities to be
11 fair in this case? Everybody okay?

12 Anything that I talked about that anybody
13 thinks, you know, I mentioned earlier that you
14 think you might want to know now? Any
15 questions for me?

16 Thank you very much for your time.

17 THE COURT: Mr. Dranove.

18 MR. DRANOVE: Thanks, Judge.

19 Can I have that table?

20 THE COURT: I will ask one of the court
21 officers to open it up for you.

22 MR. DRANOVE: Well, my name is Joel
23 Dranove. I represent Mr. Rivera.

24 Miss Gill, we have had a case or two
25 together; is that right?

Jury Selection

75

1 THE JUROR: I don't recall.

2 MR. DRANOVE: I have been in the Brooklyn
3 DA's office?

4 THE JUROR: Yes. '92 to '96.

5 MR. DRANOVE: Do you remember me?

6 THE JUROR: No, I don't.

7 MR. DRANOVE: Attorney with the federal
8 federal lab is the --

9 MS. CHU: I am going to object. She said
10 she didn't --

11 MR. DRANOVE: -- constitution --

12 THE COURT: I'll allow it.

13 MR. DRANOVE: Constitutional law.

14 THE JUROR: Yes.

15 MR. DRANOVE: When were you in the Queens
16 DA's office?

17 THE JUROR: From '97 to 2001.

18 MR. DRANOVE: Remember me from Queens DA's
19 office?

20 THE JUROR: No.

21 MR. DRANOVE: Never seen me before?

22 THE JUROR: No. Can't say never seen you,
23 I just don't recall you.

24 MR. DRANOVE: Do you think that your many
25 years in the prosecutor's office may have

Jury Selection

76

1 caused you to have predisposition to believe
2 they're prosecuting the right guy for the right
3 crime?

4 THE JUROR: No. Because there's a lot of
5 people, lots of innocent people, charged with
6 crimes and convicted of crimes.

7 MR. DRANOVE: Thank you.

8 Mr. Pabon, do you believe that is possible
9 innocent people are convicted of crimes?

10 THE JUROR: Yes, I do.

11 MR. DRANOVE: How would you know if
12 innocent persons being prosecuted?

13 THE JUROR: You don't know.

14 MR. DRANOVE: You wait to hear the
15 evidence?

16 THE JUROR: Exactly.

17 MR. DRANOVE: Officer Beard, have you
18 always been an officer in the Bronx?

19 THE JUROR: No.

20 MR. DRANOVE: In Brooklyn at any time?

21 THE JUROR: No.

22 MR. DRANOVE: Where else?

23 THE JUROR: Harlem. Harlem and the Bronx.

24 MR. DRANOVE: Just investigated any
25 homicide cases at all or participated in the

Jury Selection

77

1 investigation?

2 THE JUROR: I did one probably about ten,
3 15 years ago.

4 MR. DRANOVE: What do you know on the job?

5 THE JUROR: I work in Transit now.

6 MR. DRANOVE: Underground or above?

7 THE JUROR: Both.

8 MR. DRANOVE: Are you undercover or
9 something I shouldn't be asking?

10 THE JUROR: Uniform.

11 MR. DRANOVE: Have you testified in court?

12 THE JUROR: Yeah.

13 MR. DRANOVE: Questioned by defense
14 lawyers?

15 THE JUROR: Not recently. No.

16 MR. DRANOVE: Anything about the trial
17 experience that leave us with any propensity
18 towards one side or the other?

19 THE JUROR: No.

20 MR. DRANOVE: Miss Jones?

21 THE JUROR: Yes.

22 MR. DRANOVE: Work in MCC?

23 THE JUROR: Yes.

24 MR. DRANOVE: You're in special
25 investigations?

Jury Selection

78

1 THE JUROR: Yes.

2 MR. DRANOVE: What do you investigate?

3 THE JUROR: Staff and innocent crimes
4 within -- inside the institution.

5 MR. DRANOVE: You say innocent crimes,
6 whatever it might be?

7 THE JUROR: Yes.

8 MR. DRANOVE: What about staff, what do
9 you investigate about staff?

10 THE JUROR: We have staff, good staff, we
11 have bad staff.

12 MR. DRANOVE: Have you -- have you -- we
13 come across each other --

14 THE JUROR: I don't recall you.

15 MR. DRANOVE: How long have you been
16 working as a special investigator, whatever
17 your title is?

18 THE JUROR: Here MCC, New York, I have
19 been here since 2007.

20 MR. DRANOVE: Before 2007, where were you?

21 THE JUROR: I was in --

22 MR. DRANOVE: Federal --

23 THE JUROR: Yes.

24 MR. DRANOVE: -- Bureau of Prisons?

25 THE JUROR: Yes.

Jury Selection

79

1 MR. DRANOVE: What were you doing out
2 there?

3 THE JUROR: Same thing.

4 MR. DRANOVE: How many years --

5 THE JUROR: From 2003 until I got here.

6 MR. DRANOVE: Do you have any problem with
7 keeping an open mind?

8 THE JUROR: No.

9 MR. DRANOVE: You weren't never a juror;
10 is that correct?

11 THE JUROR: No.

12 MR. DRANOVE: Is it correct that you were
13 never a juror?

14 THE JUROR: Yes.

15 MR. DRANOVE: I am going to tell all of
16 you that I am not going to give you any, what
17 if you heard questions. I prefer you hear it
18 and make up your own mind at the end.

19 Now, is there anybody who hasn't heard
20 whatever we discussed, has any problem with the
21 nature of what they have heard may or may not
22 come out on the witness stand?

23 And that being a problem that prevents
24 them from saying, I want to be a juror on this
25 case?

Jury Selection

80

1 No hands means, I don't have a problem,
2 right? Okay. It's 20 people takes two sheets.

3 Okay, Mr. Sutton, did you say you're a
4 real estate investor?

5 THE JUROR: I did.

6 MR. DRANOVE: You work out of Brooklyn?

7 THE JUROR: I work out of Manhattan.

8 MR. DRANOVE: Have you ever been a juror?

9 THE JUROR: No.

10 MR. DRANOVE: You ever been called down to
11 be a juror before this time?

12 THE JUROR: Yes.

13 MR. DRANOVE: Were you ever in an panel?

14 THE JUROR: No, I never got --

15 MR. DRANOVE: Never got this far?

16 THE JUROR: No.

17 MR. DRANOVE: What type of real estates do
18 you deal with?

19 THE JUROR: Commercial.

20 MR. DRANOVE: Like I said before. And the
21 prosecutor said, trial is about to start, and
22 I'm finished, Judge.

23 THE COURT: All right, so here's how it
24 works. The parties will decide who they would
25 like to select from this group. And once we

Jury Selection

81

1 finish with that, then we go forward with the
2 next round.

3 I am going to excuse everybody, go
4 outside, stretch your legs before the next
5 rounds begin.

6 Those in the gallery, step out in the
7 hallway.

8 Those in the jury box, follow the way out.
9 Don't leave the floor.

10 If you want to use the facility, they're
11 down the hall. We will be a few minutes.

12 (Jury Panel Excused)

13 THE COURT: A juror asked to speak with me
14 privately. Counsel want to approach?

15 For the record, is it okay? It's all
16 right?

17 THE DEFENDANT: Yes. Yes.

18 THE COURT: Come on up.

19 (Whereupon, there was a discussion held
20 off the record with a juror at this time.)

21 THE COURT: For the record, the juror
22 seated in seat 16, Mr. Sutton, just came up and
23 told us that he can't be fair. He said he's
24 biased, and when I asked him why, he couldn't
25 give me a reason. But he just wanted us to

Jury Selection

82

1 know. And counsel did not have questions for
2 him.

3 MR. DRANOVE: Also, with respect to that,
4 my client was advised by me of his right to be
5 present at these sidebars, which right was
6 explained in People versus Antemarche I related
7 to my client. He informed me to notify The
8 Court, I am putting more expansively on the
9 record because I did notify The Court that he
10 agrees that I should be the only one from the
11 defense table at the sidebars with the jury men
12 and women.

13 THE COURT: Okay. Thank you.

14 Miss Chu, let me know when you're ready.

15 (pause)

16 THE COURT: Let's talk about the first 12
17 jurors. Everyone in the front row. And the
18 first two jurors in the back row. That's up to
19 and includes Miss Jones in seat 12.

20 Any challenge for cause by the People?

21 MS. CHU: None for cause.

22 THE COURT: Any challenge for cause, by
23 the Defense, in first group of 12?

24 MR. DRANOVE: No.

25 THE COURT: Precinct by the people.

Jury Selection

83

1 MS. CHU: Yes. Juror number 1.

2 THE COURT: Miss Jean Baptist is excused.

3 MS. CHU: Juror number 2.

4 THE COURT: Miss Gill is excused.

5 MS. CHU: Juror number 3.

6 THE COURT: Miss Artis is excused.

7 MS. CHU: And juror number 7.

8 THE COURT: Miss Rodriguez is excused.

9 MS. CHU: I have completed my challenges.

10 THE COURT: I will hear any peremptory
11 challenges by the defense, remaining jurors in
12 that group?

13 MR. DRANOVE: 4.

14 THE COURT: Mr. Pabon is excused.

15 MR. DRANOVE: 6, Officer Beard.

16 THE COURT: Mr. Beard is excused.

17 MR. DRANOVE: 11 and 12.

18 THE COURT: Miss McCarthy and Miss Jones
19 are excused.

20 THE COURT: Does that complete your
21 peremptory challenge in that group?

22 MR. DRANOVE: Ah-huh.

23 THE COURT: Mr. Chance, juror number 1.
24 Mr. Chu, juror number 2.

25 MR. DRANOVE: Does the prosecutor know

Jury Selection

84

1 whether or not she's related to Mr. Chu?

2 THE COURT: I asked the audience whether
3 they knew anyone here. It's a very common
4 name, as you know.

5 MR. DRANOVE: I had to raise the question.
6 I think it's a fair question.

7 THE COURT: You want to answer the
8 question?

9 MS. CHU: I don't know.

10 THE COURT: It's sort of like Smith. It's
11 a common name.

12 I asked people out there if there's any
13 relationship or know any of the people. I
14 guess like Rodriguez. He didn't -- would be a
15 common Hispanic name or whatever. There is no
16 reason to believe he has any connection with
17 her because I asked him that. He would know if
18 he did. He didn't raise his hand.

19 Number 3 is Miss -- Mr. Warner. I am
20 sorry. And number 4 is Mr. Proffer.

21 Let's talk about the eight jurors. That
22 everyone left in the jury box.

23 Now, I believe we are going to excuse
24 Mr. Sutton in seat 16 for cause on consent.
25 Correct?

Jury Selection

85

1 MS. CHU: Yes.

2 MR. DRANOVE: Yes.

3 THE COURT: He is excused on consent for
4 cause.

5 Any other challenges for cause in that
6 group by the People?

7 MS. CHU: No.

8 THE COURT: For cause by the Defense?

9 MR. DRANOVE: No.

10 THE COURT: Peremptory by the People?

11 MS. CHU: Yes. Juror number 17.

12 THE COURT: Miss McGowan.

13 MS. CHU: Juror number 18.

14 THE COURT: Miss Constantine.

15 MS. CHU: And juror number 19.

16 THE COURT: Miss Lopera.

17 MS. CHU: And I have no further
18 challenges.

19 THE COURT: Any peremptory challenge by
20 the Defense two remaining jurors in that group?

21 MR. DRANOVE: None.

22 THE COURT: That means Miss Howe becomes
23 juror number 5. Mr. Antigua, number 6.
24 Mr. Jeremiah number 7. And number --
25 Steininger, number 8.

Jury Selection

86

1 THE COURT: Mr. Chu is the one who had the
2 job interview. So I am asking your permission
3 for me to speak to him outside of your
4 presence, if necessary, to resolve that issue.
5 I'll only speak to him about his job interview
6 to get the information and possibly have to
7 speak to his employer before he leaves today.

8 Is there any objection by the People to
9 that?

10 MS. CHU: No.

11 THE COURT: By the Defense?

12 MR. DRANOVE: None.

13 (Whereupon, the selected jurors were sworn
14 at this time.)

15 (Remaining jury panel entering)

16 THE COURT: We're ready to go forward with
17 the next round. When your name is called,
18 bring your belongings and take a seat in the
19 jury box. COURT CLERK: B-I-N-E-M.

20 N-A-I-M-A-N; Gem Vancooten, V-A-N-C-O-O-T-E-N;
21 David Garcia, G-A-R-C-I-A; Thomas McDonald,
22 M-C-D-O-N-A-L-D; Joseph O'Connell,
23 O-C-O-N-N-E-L-L; Calvin Chandler,
24 C-H-A-N-D-L-E-R; Nicola Telford, T-E-L-F-O-R-D;
25 Catherine P-A-S-Z-K-O-W-S-K-I; Edwin Gonzalez,

Jury Selection

87

1 G-O-N-Z-A-L-E-Z; Yevgeny Spektor,
2 S-P-E-K-T-O-R; Eutisha Rennix, R-E-N-N-I-X;
3 Reginald Mathis, M-A-T-H-I-S; Marjorie Trafton,
4 T-R-A-F-T-O-N; Lucy Koteen, C-O-T-E-E-N;
5 Marianne Thompson, T-H-O-M-P-S-O-N; Christie
6 Rasado, R-A-S-A-D-O; LaToya Everett,
7 E-V-E-R-E-T-T; Anthony Arnold; A-R-N-O-L-D;
8 Jean Loconde, L-O-C-O-N-D-E; Marianne Tollier,
9 T-O-L-L-I-E-R.

10 THE COURT: You folks heard my questions
11 before. I am going to ask you the same things
12 that I asked the first group.

13 Let's start with you. Naiman. Tell us
14 about yourself, please?

15 THE JUROR: I live Boro Park. Brooklyn.
16 I am married, and I run a restaurant.

17 THE COURT: Thank you, Mr. Naiman.

18 Next we have Vancooten.

19 THE JUROR: I live in Flatbush. I'm
20 retired. I'm a registered nurse. I work in
21 the unite advertised unit.

22 THE COURT: What part of Brooklyn you live
23 in?

24 THE JUROR: Flatbush.

25 THE COURT: Next we have Mr. Garcia.

Jury Selection

88

1 THE JUROR: I am a student. I live in
2 Park Slope. And I am engaged.

3 THE COURT: What are you studying to be?

4 THE JUROR: A cartoonist.

5 THE COURT: You're able to get through the
6 trial with your scheduling as a student no
7 problem?

8 THE JUROR: Next Friday I have final. I
9 don't know --

10 THE COURT: If we need you to be prepared
11 to be here next week?

12 THE JUROR: Possible way -- I can talk to
13 my professor and schedule the test on office
14 hours.

15 Is there a way I can prove I was here?

16 THE COURT: I give everyone proof they
17 were here.

18 Thank you very much.

19 Mr. McDonald?

20 THE JUROR: Live in Bay Ridge. Married,
21 and I'm retired guidance counselor.

22 THE COURT: Thank you.

23 Mr. O'Connell.

24 THE JUROR: I live in Sunset Park. I am
25 single, a copy editor for a magazine.

Jury Selection

89

1 Freelance writer.

2 THE COURT: What magazines, you cover what
3 subject?

4 THE JUROR: Forbes. Financial magazine.

5 THE COURT: Thank very much.

6 Mr. Chandler?

7 THE JUROR: I live in Crown Heights.

8 Unemployed and single.

9 THE COURT: Have you work in the past?

10 THE JUROR: Yes.

11 THE COURT: What kind --

12 Media coordinator.

13 THE COURT: Thank you.

14 Next we have Miss Telford.

15 THE JUROR: I live in Mill Basin. I am
16 registered CN. Nursing assistant, and I am
17 married.

18 THE COURT: Thank you.

19 Next up is Miss Paszkowski.

20 THE JUROR: I live in Park Slope. I am in
21 a relationship, and I'm an attorney.

22 THE COURT: Again, what kind of legal work
23 do you do?

24 I am court attorney for a Civil Court
25 judge. In New York county.

Jury Selection

90

1 THE COURT: Did you ever do any criminal
2 work before you did that?

3 I interned one semester in the New York
4 County District Attorney's office.

5 THE COURT: Move over to Mr. Gonzalez.

6 THE JUROR: I live in Canarsie. I am
7 single. And I do building maintenance.

8 THE COURT: Thank you.

9 Next up is Mr. Spektor.

10 THE JUROR: I live in Bensonhurst. I am a
11 designer. I'm married.

12 THE COURT: Thank you.

13 Let's go to the back row. Miss Rennix.

14 THE JUROR: I live in East Flatbush. I am
15 in a relationship, and I'm a cashier.

16 THE COURT: What kind of business?

17 THE JUROR: Cafe.

18 THE COURT: We move over to Mr. Mathis.

19 THE JUROR: I live in Flatbush. I am
20 married. And I am computer tech.

21 THE COURT: Thank you, Mr. Mathis.

22 Next, Miss Trafton.

23 THE JUROR: I am single. Live in Crown
24 Heights, and I do event marketing.

25 THE COURT: Event marketing.

Jury Selection

91

1 THE JUROR: For a furniture magazine.

2 THE COURT: Forbes?

3 THE JUROR: No.

4 THE COURT: Next, Miss Koteen?

5 THE JUROR: I am married. I live in Fort
6 Greene. I have been a teacher. I currently
7 work in --

8 THE COURT: What subject do you teach?

9 THE JUROR: I worked with younger children
10 and then afterschool. After school program.
11 Director for after school program two years.

12 THE COURT: What do you do now?

13 THE JUROR: I work in lactation breast
14 feeding help.

15 THE COURT: Miss Thompson.

16 THE JUROR: I live in Williamsburg. I am
17 single, and I am a student.

18 THE COURT: What are you studying to be?

19 THE JUROR: A psychiatrist.

20 THE COURT: Your studies permit you to be
21 here now?

22 THE JUROR: Yeah. I am taking sometime
23 off right now.

24 THE COURT: Thank you, Thompson.

25 Next we have Miss Rasado.

Jury Selection

92

1 THE JUROR: I live in Bay Ridge. I am in
2 a relationship. I am freelance graphic
3 designer.

4 THE COURT: We move next to Miss Everett.

5 THE JUROR: I live in Flatbush. And edit
6 magazine. What was the other question?

7 THE COURT: Are you married or in --

8 THE JUROR: In a relationship.

9 THE COURT: Thank you.

10 Next up is Mr. Arnold.

11 THE JUROR: In relationship and
12 Williamsburg, Brooklyn. I'm real estate
13 developer.

14 THE COURT: What kind of developer?

15 THE JUROR: Real estate.

16 THE COURT: Thank you.

17 Next up is Mr. Loconde.

18 THE JUROR: East Flatbush. I am engaged.
19 And I do marketing promotion.

20 THE COURT: Thank you.

21 Next is Miss Koteen.

22 THE JUROR: I am single. I live in
23 Flatbush, and I am retired.

24 THE COURT: What kind of work do you do?

25 THE JUROR: Clerical.

Jury Selection

93

1 THE COURT: What kind of business?

2 THE JUROR: Social services.

3 THE COURT: Thank you.

4 Is there anyone in this group who has been
5 selected to be on a jury before? Any kind of
6 case, just raise your hand if you've actually
7 been on a jury.

8 Let me just start over here. Mr.
9 Gonzalez, how long for you?

10 THE JUROR: Nine years ago.

11 THE COURT: What kind of case was it?

12 THE JUROR: It was murder.

13 THE COURT: Did the jury reach a verdict?

14 THE JUROR: Yes.

15 THE COURT: Miss Paszkowski?

16 THE JUROR: It was 12 years ago. It was a
17 prosecution sting case. And we did reach a
18 verdict.

19 THE COURT: Who else in the front row, I
20 see hands? Mr. McDonald?

21 THE JUROR: About 20 years ago. It was a
22 civil case.

23 THE COURT: Was there a verdict or did
24 they settle it?

25 THE JUROR: It turned into a mess because

Jury Selection

94

1 we went to trial and the first witness for the
2 plaintiff screwed up his story and the lawyers
3 was trying to get him to change his story and
4 then --

5 THE COURT: The trial ended?

6 THE JUROR: Yes.

7 THE COURT: Hopefully that is not going to
8 happen here.

9 Who else in the front row? Mrs. Koteen?

10 THE JUROR: Yes, an accident case.

11 THE COURT: Did the jury reach a verdict?

12 THE JUROR: Yes.

13 THE COURT: In the back row, let me see
14 those hands again.

15 Mr. Mathis?

16 THE JUROR: It was a civil case. It did
17 go to a verdict.

18 THE COURT: Anyone else in the back row?

19 Anyone else, I haven't heard from, ever
20 work for the DA's office, police department,
21 court system, someone in your immediate family
22 who had worked for those agencies?

23 Mr. Mathis?

24 THE JUROR: I have two brothers. One
25 retired police. One is now working for the

Jury Selection

95

1 police.

2 THE COURT: Do you know where your brother
3 is assigned right now?

4 THE JUROR: Downtown Brooklyn.

5 THE COURT: Anything about your
6 relationship with them that creates a problem
7 for you to be a fair juror?

8 THE JUROR: I think I can.

9 THE COURT: You can fair?

10 THE JUROR: I can be fair.

11 THE COURT: Mr. McDonald, is your hand up?

12 THE JUROR: Yes.

13 My father was a New York City detective.
14 He's deceased.

15 THE COURT: Anyone else?

16 Miss Paszkowski?

17 THE JUROR: I just forgot to say something
18 about myself.

19 My job is in civil, but we were in
20 criminal assigned for a year. New York City.

21 THE COURT: Who was the judge you work
22 for?

23 THE JUROR: Barbara Jaffe.

24 THE COURT: Anyone else?

25 Anyone have a problem as far as being fair

Jury Selection

96

1 when it comes to police testimony?

2 We are going to have police officer
3 witnesses. Anybody couldn't treat them the
4 same way as anyone else? No better, no worse.
5 Anyone has a problem with that?

6 Anyone had the experience of being the
7 victim of a crime or someone in your family?

8 Mr. O'Connell?

9 THE JUROR: I was a victim of armed
10 robbery, a store hold up about a year and a
11 half ago.

12 THE COURT: Was that here in Brooklyn?

13 THE JUROR: Yes, it was in Bushwick.

14 THE COURT: Did you report it?

15 THE JUROR: Yes.

16 THE COURT: Was anyone ever caught?

17 THE JUROR: No, not to my knowledge.

18 THE COURT: Is that going to create a
19 problem to be a fair juror?

20 THE JUROR: I don't think so.

21 THE COURT: Anyone else in the front row?
22 Miss Paszkowski?

23 My grandparents were murdered 27 years
24 ago.

25 THE COURT: In Brooklyn?

Jury Selection

97

1 THE JUROR: No, Poland.

2 THE COURT: Anyone caught?

3 THE JUROR: Yes.

4 THE COURT: Does that impact your ability
5 to be a fair juror in a murder case?

6 THE JUROR: No, not at all.

7 THE COURT: Mr. Gonzalez?

8 THE JUROR: I was robbed last August at
9 gunpoint.

10 THE COURT: Here in Brooklyn?

11 THE JUROR: Yes.

12 THE COURT: Did you report it?

13 THE JUROR: Yes.

14 THE COURT: Anyone ever caught?

15 THE JUROR: Yes.

16 THE COURT: Did you have to testify or
17 have you --

18 THE JUROR: No. I had to come over to
19 testify in front of the grand jury.

20 THE COURT: That is what I meant.

21 What happened with the case? Is it
22 finished?

23 THE JUROR: The detective never called me
24 back. They just called to testify in the grand
25 jury what happened to me.

Jury Selection

98

1 THE COURT: You don't know what happened
2 with the case.

3 THE JUROR: I don't know what happened to
4 the case.

5 THE COURT: Anything about that experience
6 that would create a problem for you to be a
7 fair juror?

8 THE JUROR: No. Not at all.

9 THE COURT: Who else in the front row?
10 Mr. Garcia?

11 THE JUROR: I was stabbed. About eight
12 years ago.

13 THE COURT: Here in Brooklyn?

14 THE JUROR: (Indicating)

15 THE COURT: Did you report it?

16 THE JUROR: (Indicating)

17 THE COURT: Do you know who did it?

18 THE JUROR: No.

19 THE COURT: Did the police ever catch
20 anyone?

21 THE JUROR: No.

22 THE COURT: Now, this case involved a
23 stabbing that ultimately led to a death.

24 Do you think, because of your experience
25 as a victim of a stabbing, that would create a

Jury Selection

99

1 problem for you to be completely fair and
2 impartial?

3 THE JUROR: Yes, I do.

4 THE COURT: Then return to Central Jury,
5 Mr. Garcia, on the second floor.

6 Anyone else who has been a victim of a
7 crime that I missed?

8 Mr. Loconde?

9 THE JUROR: I was robbed at gunpoint ten
10 years ago. In Brooklyn.

11 THE COURT: He was rob at gunpoint about
12 ten years ago in Brooklyn.

13 Did you report it to the police.

14 THE JUROR: Yes.

15 THE COURT: Anyone ever caught?

16 THE JUROR: No.

17 THE COURT: Anything about that experience
18 create a problem for you to be fair?

19 THE JUROR: No.

20 THE COURT: Mr. Spektor?

21 THE JUROR: That was long ago, about 19
22 years ago, I was assaulted with a knife. My
23 bike got taken away. But I never reported it
24 because it was -- it wasn't local gang.

25 THE COURT: Anyone else?

Jury Selection

100

1 Let's fill in seat 3.

2 COURT CLERK: Jean Bruce B-R-U-C-E.

3 THE COURT: Mr. Bruce, how are you?

4 THE JUROR: Fine.

5 THE COURT: Would you be good enough to
6 tell us about yourself, please?

7 THE JUROR: I am married. I live in East
8 Flatbush. I work in a hospital for special
9 surgery as a PCA.

10 THE COURT: What exactly do you do there?

11 THE JUROR: Like a nurse technician.

12 THE COURT: Have you ever been on a jury?

13 THE JUROR: Yes.

14 THE COURT: About how long ago?

15 THE JUROR: Eight years.

16 THE COURT: Do you know what kind of case
17 it was?

18 THE JUROR: Civil.

19 THE COURT: Did the jury reach a verdict?

20 THE JUROR: Yes.

21 THE COURT: Anyone in your family ever
22 worked for those agencies I keep mentioning?
23 Police, DA's office, court system?

24 THE JUROR: Yes. My son-in-law.

25 THE COURT: Who does he work for?

Jury Selection

101

1 THE JUROR: Federal government.

2 THE COURT: Is there anything about his
3 work or anything else that would create a
4 problem to be fair when it comes to police
5 testimony?

6 THE JUROR: No.

7 THE COURT: Anyone been the victim of a
8 crime in your family?

9 THE JUROR: I did. I was stabbed eight
10 years ago.

11 THE COURT: Here in Brooklyn?

12 THE JUROR: Yes.

13 THE COURT: Did I report it to the police?

14 THE JUROR: Yes.

15 THE COURT: Did they ever catch anyone?

16 THE JUROR: Yes.

17 THE COURT: Was it someone you knew or a
18 stranger?

19 THE JUROR: Stranger.

20 THE COURT: Did you have to testify?

21 THE JUROR: Yes.

22 THE COURT: Was there a trial?

23 THE JUROR: Yes.

24 THE COURT: Anything about your experience
25 that would create a problem for you to be a

Jury Selection

102

1 fair juror in this kind of case?

2 THE JUROR: No.

3 THE COURT: Were you seriously injured in
4 that matter?

5 THE JUROR: Yes. I was out of work for
6 six weeks.

7 THE COURT: You heard the charge in this
8 case. I just want to make sure, because they
9 involve a stabbing in this case too, if you
10 would feel sensitive about the fact that you
11 were the victim of a stabbing that would impact
12 your ability to be fair?

13 THE JUROR: No.

14 THE COURT: Thank you very much.

15 Last question for everyone: Has anyone
16 been arrested, convicted of a crime? Someone
17 in your family may have had that experience, we
18 need to know that also.

19 Mr. Loconde?

20 THE JUROR: Refusal to take a
21 breathilizer.

22 THE COURT: This was driving while
23 intoxicated or impairment?

24 THE JUROR: Allegedly, yeah.

25 THE COURT: Were you arrested for that?

Jury Selection

103

1 THE JUROR: I didn't take the
2 breathalizer.

3 THE COURT: That was here in Brooklyn?

4 THE JUROR: Yes.

5 THE COURT: What ultimately happened with
6 the case?

7 THE JUROR: It's still open.

8 THE COURT: Is there something about that
9 experience with the police -- obviously you're
10 not happy about it. We understand that.

11 THE JUROR: Right.

12 THE COURT: -- spill over where you think
13 it will impact your ability to be a fair juror?

14 THE JUROR: No.

15 THE COURT: Who else? Mr. Arnold?

16 THE JUROR: Trespassing.

17 THE COURT: Here in Brooklyn?

18 THE JUROR: No.

19 THE COURT: Where was that?

20 THE JUROR: In Connecticut.

21 THE COURT: What ultimately happened with
22 that?

23 THE JUROR: It was dismissed. It was
24 skateboarding in a drained pool.

25 THE COURT: Skateboarding in a drained

Jury Selection

104

1 pool?

2 THE JUROR: Yes.

3 THE COURT: In someone's back --

4 THE JUROR: In someone's backyard.

5 THE COURT: Anything about your experience
6 that would create a problem to be a fair juror?

7 THE JUROR: No.

8 THE COURT: You still skateboard?

9 THE JUROR: Of course.

10 THE COURT: Who else had that experience
11 of being arrested, convicted or your family?

12 Mr. Naiman?

13 THE JUROR: Somebody in my family arrested
14 for robbery or something like that. Money.

15 THE COURT: Anything about that create a
16 problem for you?

17 THE JUROR: No.

18 THE COURT: Anyone else?

19 All right, I am finished with my
20 questions. And I am going to turn the floor
21 over to Miss Chu.

22 MS. CHU: Good afternoon, ladies and
23 gentlemen.

24 We talked about the fact that there is a
25 lot of things on TV now about this whole

Jury Selection

105

1 scenario. Courtrooms shows, police shows,
2 things like that. Is there anyone here that
3 feels as though you expect people to come up
4 here and look like actors that you see on the
5 TV, this case is going to get wrapped up in an
6 hour, commercials? You understand that's not
7 real? Can you all accept that people that
8 testify or who come are witnesses in this case
9 are just real live people just like you and I?
10 Yes?

11 THE JURORS: Yes.

12 MS. CHU: What I wanted to ask you about
13 is that the fact when the clerk was calling
14 your name out, how many got a little nervous?
15 When you came up here. The judge asked you
16 questions. A little nervous.

17 Only two people. Yes, a little bit.

18 Do you think that that might happen,
19 someone might get up here and testify as a
20 witness? Yes?

21 Would you all agree that everybody shows
22 their nervousness or stress, they deal with
23 stress differently? Would you all agree with
24 that? Can you all take that into consideration
25 when you're deciding or you're listening to

Jury Selection

106

1 what someone has to say? Yes, you can do that?

2 Now, we talked a little bit earlier about
3 the fact that if more than one person view
4 something occurring, that not everybody is
5 going to have the same account of what
6 occurred. Anyone here that would disagree with
7 that? That thinks everybody should have the
8 same account?

9 Noone disagrees? No?

10 I also talked about the fact that if
11 someone told somebody what happened, every time
12 they said it, won't -- it won't be something
13 that would be unusual. Would you all agree
14 with that as well? Can you accept that people
15 are human just like you and I? Yes?

16 THE JURORS: Yes.

17 MS. CHU: Now, we also talked about the
18 fact that if you were wearing a white shirt and
19 I came up to you --

20 MR. DRANOVE: Objection.

21 THE COURT: Let me hear the question
22 again?

23 MS. CHU: And I touched you, and you had a
24 red mark on your shirt, that even though you
25 might have seen a marker in my hand, I clearly

Jury Selection

107

1 must have had one.

2 THE COURT: I'll allow it.

3 MS. CHU: Would you agree with that? Yes?
4 Would you be able to come to that conclusion?
5 Yes? Anyone here that would not be able to do
6 that?

7 MR. DRANOVE: I object to.

8 THE JUROR: If it was unless it was marked
9 before. Obviously --

10 MS. CHU: Right. Let's say a clean white
11 shirt you just bought and put it on that day.

12 THE JUROR: Maybe I haven't noticed the
13 mark. Clean white shirt with a mark.

14 MS. CHU: True. If you hear -- is it
15 possible --

16 MR. DRANOVE: I withdraw my objection.

17 THE JUROR: It's possible.

18 MS. CHU: I looked at your shirt, you
19 know, it's got nothing on it. Right? Would
20 everybody be able to draw that conclusion?
21 Yes?

22 Now, we also talked about the fact that
23 you may hear from witnesses in this case that
24 have criminal histories. Is anyone here -- I
25 am not saying you can take into consideration

Jury Selection

108

1 if someone's been accused or convicted of a
2 crime, you can take that into consideration
3 when you're deciding whether or not to believe
4 them. But I just want to know whether or not,
5 you know what, no matter what, whatever they
6 say, I can believe them. Because of the fact
7 that they've been convicted of a crime or maybe
8 they even have a lifestyle that you don't
9 approve of or you don't care for. Anyone here
10 that thinks right off the bat, I could not give
11 that person a listen? Everybody okay with
12 that? Can you decide on your own whether or
13 not that person, what they tell you, makes
14 sense when you compare, contrast to the other
15 evidence you're going to hear in the case? Can
16 you do that in this case? Yes?

17 THE JURORS: Yes.

18 MS. CHU: I talked also about police
19 officer witnesses and the fact that you'll be
20 hearing from some. How many of you ever gotten
21 a ticket from a police officer? Running a red
22 light? Whatever it is. We have all had bad
23 experiences, good experiences and we talked
24 about the fact that everybody, no matter what
25 you do, there are some people that are very

Jury Selection

109

1 good at what they do and some people are very
2 bad. You have to decide whether these
3 witnesses, whoever they are, whether civilian
4 or they are police officers, if they are
5 telling you the truth based upon the other
6 evidence that you're going to hear in this
7 case. Can you do that?

8 MR. DRANOVE: Objection to that
9 characterization.

10 THE COURT: I'll allow it.

11 You will have to decide whether you
12 believe they are telling the truth or not.
13 That is up to you.

14 MS. CHU: Can you do that in this case?
15 Yes?

16 Now, we also talked about the fact that
17 you may be hearing evidence or you might hear
18 evidence in this case the defendant made
19 certain statements. Now, we talked about the
20 fact that -- let me ask you. Do you think it
21 would be unusual for someone who is questioned
22 by the police to ever talk to them?

23 Does anybody think that is something you
24 can fathom? You're okay with that?

25 Do you think if someone speaks to the

Jury Selection

110

1 police they would try to say something in the
2 best light to them? Is there a possibility?

3 MR. DRANOVE: I object, again, to this
4 area.

5 THE COURT: I'll allow it.

6 MS. CHU: Do you think that's a
7 possibility?

8 Yes.

9 Now, are you the type of person that can
10 decide whether or not someone is being truthful
11 or not truthful based upon other evidence you
12 may hear in this case?

13 Some people think they are not good at
14 that. Do you think you are? Yes? Okay.

15 Now, the last thing I want to talk about
16 is the fact that we talked a little bit about
17 sympathy.

18 I want you guys to all take a look at the
19 defendant. Is there anything about the way he
20 looks that you think would prevent you from
21 deciding this case only on the facts? Only on
22 what you hear in here, the evidence that's
23 before you?

24 Because you understand that once you're
25 selected as jurors and you're back there

Jury Selection

111

1 deliberating, you can't say, you know what, I
2 feel sorry for someone. Whatever it is.
3 Sympathy should play no part in your decision
4 in this case.

5 Can you all separate that and be able to
6 decide this case only on the evidence? Can you
7 do that?

8 THE JURORS: Yes.

9 MS. CHU: Anything that we mentioned,
10 either on the other round or during my talk
11 with you or with the judge's, that you think
12 you might want to draw your attention or you
13 have a question? Everybody okay?

14 Thank you very much for your time.

15 THE COURT: Mr. Dranove, last but not
16 least.

17 MR. DRANOVE: This is a test. Raise your
18 hand if you think my client's guilty? Anybody
19 think he's guilty? Raise your hand, this is
20 your chance.

21 I see no hands up. That is good. You
22 have been paying attention to the judge.

23 I have a few questions. Too many --
24 Mr. O'Connell, you were a victim of a violent
25 crime here in Brooklyn. How long ago was it?

Jury Selection

112

1 THE JUROR: It was September of 2007.

2 MR. DRANOVE: Were there -- was it day or
3 night?

4 THE JUROR: Night.

5 MR. DRANOVE: Were you alone at the time?

6 THE JUROR: I was -- there was in a -- I
7 was in a bodega, there was a cashier, I was the
8 only customer in the store.

9 MR. DRANOVE: You still get nervous about
10 it when you think about it?

11 THE JUROR: Sometimes.

12 MR. DRANOVE: I say sort of -- well, if
13 you're here, you're going to be sitting through
14 days of testimony concerning a homicide early
15 Sunday morning in a bar.

16 Now, just thinking a little more, do you
17 feel your personal emotions may get in the way
18 of sitting through this?

19 THE JUROR: No, I think I could be fair.

20 MR. DRANOVE: Then Mr. Gonzalez, as far as
21 you know, your case is still -- the case where
22 you're the victim is still open; is that right?

23 THE JUROR: I really don't know.

24 MR. DRANOVE: Don't you care?

25 THE JUROR: Yes, I care.

Jury Selection

113

1 MR. DRANOVE: You want to make sure the
2 right guy is convicted?

3 THE JUROR: Yeah.

4 MR. DRANOVE: If it's right --

5 THE JUROR: If it's the right guy.

6 MR. DRANOVE: Just identify --

7 THE JUROR: Yes, I went to a line-up.

8 MR. DRANOVE: And since then, have you
9 taken any steps, like a phone call, to like
10 step up to make -- and say what's happening?

11 THE JUROR: Well, I spoke to the detective
12 and detective said, you know, to come in
13 because I was so traumatized, you know. I came
14 in, and I testified in front of a grand jury.
15 And, you know, the attorney told me, you know,
16 you did what you had to do. And that was it.
17 Because I was very traumatized. I was like I
18 wasn't myself.

19 MR. DRANOVE: I just want to ask you
20 something personal, but I think it's the right
21 question. Since this happened to you in
22 Brooklyn.

23 THE JUROR: Yes.

24 MR. DRANOVE: You've got to rely on if you
25 think you identified the right person.

Jury Selection

114

1 Brooklyn prosecutor's office want to see that
2 justice is done. Can you give all of us your
3 word, or can you not give us your word that you
4 could put your own personal nightmare aside and
5 just sit there really close to the witnesses,
6 and to Mr. Rivera, this judge, this case, as
7 this case should be judged?

8 THE JUROR: Yes. Yes.

9 MR. DRANOVE: Great.

10 Now, the prosecutor talked to you about
11 putting something on someone's white shirt. In
12 that area, listen to the testimony, direct
13 examination, cross-examination, there are no
14 white shirts, there were no red markers in this
15 case. And there are bad and good guys, but I
16 am not going to attempt an analogy.

17 Raise your hand, please, if you believe it
18 possible that the police can put pressure on
19 somebody so that the person can make a
20 statement? Do you think police can pressure
21 someone into making a statement? Raise your
22 hand.

23 Mr. Naiman, you don't know the police can
24 pressure anybody into making a statement?

25 THE JUROR: I am not sure of the question.

Jury Selection

115

1 I don't understand. I don't understand how you
2 pressure.

3 MR. DRANOVE: Well, if you don't
4 understand the question, I'll move on.

5 With respect to your relative, was your
6 relative, or someone you know --

7 THE JUROR: Relative.

8 MR. DRANOVE: State or federal?

9 THE JUROR: I have no idea.

10 MR. DRANOVE: Is he in jail now?

11 THE JUROR: Yes.

12 MR. DRANOVE: Was he convicted?

13 THE JUROR: Yes.

14 MR. DRANOVE: How many years ago? Were
15 you a witness?

16 THE JUROR: No.

17 MR. DRANOVE: Now, Mr. Bruce, you were
18 stabbed?

19 THE JUROR: Yeah.

20 MR. DRANOVE: Can you put that out of your
21 mine and sit through the testimony in another
22 case where a knife -- a knife was used?

23 THE JUROR: Yes.

24 MR. DRANOVE: Can you tell us how you can
25 put it out of your mind and judge neutrally

Jury Selection

116

1 this case?

2 THE JUROR: It's a long time, and I have
3 to move on. I cannot always look back.

4 MR. DRANOVE: Miss Vancooten, did you work
5 in any hospital?

6 THE JUROR: Yes.

7 MR. DRANOVE: In Brooklyn?

8 THE JUROR: Yes. Maimonides Medical
9 Center.

10 MR. DRANOVE: Did can you ever work in the
11 emergency room?

12 THE JUROR: No, I work in neonatal ICU.

13 MR. DRANOVE: That's serious.

14 Well -- how do you pronounce, Paszkowski.
15 What types of criminal cases were before the
16 judge when you sat in the criminal term?

17 THE JUROR: Just misdemeanors.

18 MR. DRANOVE: Any trials.

19 THE JUROR: I think we did -- while I was
20 with her, maybe three trials.

21 MR. DRANOVE: You heard all the legal
22 charges and instructions to the jury?

23 THE JUROR: Yes.

24 MR. DRANOVE: I think the judge will tell
25 you the law here, you have to accept that.

Jury Selection

117

1 THE JUROR: Yes.

2 MR. DRANOVE: Now, did you ever learn why
3 your grandparents were murdered?

4 THE JUROR: You mean -- do you mean the
5 motive?

6 MR. DRANOVE: Yes.

7 THE JUROR: I think so.

8 MR. DRANOVE: What did you understand
9 happened?

10 THE JUROR: My grandfather was a political
11 figure, and it was some kind of politically
12 motivate. The robbery that went bad.

13 MR. DRANOVE: Sorry to have to raise that
14 with you.

15 THE JUROR: No.

16 MR. DRANOVE: Mr. Loconde, how long ago
17 were you a victim of a robbery?

18 THE JUROR: Over ten years.

19 MR. DRANOVE: Still on your mind as you
20 sit here in this courtroom thinking about it
21 again, bothered by it?

22 THE JUROR: No.

23 MR. DRANOVE: Mr. Arnold, what type of
24 real estate developer are you?

25 THE JUROR: Residential or commerical.

Jury Selection

118

1 MR. DRANOVE: Brooklyn?

2 THE JUROR: Brooklyn, Bronx.

3 MR. DRANOVE: How's it going?

4 THE JUROR: We have had better days.

5 MR. DRANOVE: Who hasn't.

6 Mr. Mathis, two brothers in law

7 enforcement?

8 THE JUROR: Right.

9 MR. DRANOVE: You always get along 24
10 hours a day, everyday, live with your brothers,
11 never have any arguments?

12 THE JUROR: Of course, I have arguments
13 with them.

14 MR. DRANOVE: Thank you very much.

15 I have no further questions.

16 THE COURT: Okay. Now, there is a group
17 of you that have not been in the jury box, very
18 patiently sitting here, listening to everyone,
19 I am going to excuse you folks for your lunch
20 right now.

21 You can go out to lunch. I am going to
22 ask you to return to the Central Jury room,
23 second floor, at 2:15. Thank you for your
24 patience. Have a nice lunch.

25 Those selected to be on the trial, I am

Jury Selection

119

1 going to ask you folks to wait out in the
2 hallway for just a few more moments. Step
3 outside, just wait for us.

4 And those already in the jury box, we will
5 let you know before you go to lunch if you've
6 been picked. Wait out in the hall for a few
7 more moments. Thank you very much for your
8 patience.

9 (Prospective Jurors Excused)

10 (pause)

11 MR. DRANOVE: With respect to juror 1, may
12 very well have a case -- may have a case -- I
13 am talking about the gentleman, number 9, who
14 said he was robbed at gunpoint, testified in
15 the grand jury in Brooklyn. He doesn't know if
16 the case is over or not.

17 I think that perhaps we should find out,
18 if we can, if there is a data base the
19 prosecutor can quickly find out if there is a
20 case pending where he's the complaining witness
21 and if prosecutor is prosecuting someone, for
22 example, in this courthouse.

23 I think -- I don't remember the case law,
24 but there's been some case law about this.

25 THE COURT: Let's go to this juror when we

Jury Selection

120

1 go through the jury selection then.

2 I don't think we are going to get much
3 information unless we have a name of a
4 defendant to check it out.

5 MR. DRANOVE: I don't know, data base is
6 sophisticated in the DA's office in Brooklyn.
7 I don't know.

8 THE COURT: The important thing is
9 information he had, and what he told us. What
10 he told is the most important thing that we
11 have to rely on.

12 We have eight jurors picked, so we are
13 going to talk about the first four jurors in
14 the box. Everyone up to and including
15 Mr. McDonald in seat 4.

16 Any challenge for cause by the People?

17 MS. CHU: No.

18 THE COURT: For cause by the Defense?

19 MR. DRANOVE: No.

20 THE COURT: Peremptory by the People?

21 MS. CHU: No.

22 THE COURT: Peremptory by the Defense?

23 MR. DRANOVE: Yes. Seats 1, 3 and 4.

24 THE COURT: Mr. Naiman, Miss Bruce and
25 Mr. McDonald. Are all excused.

Jury Selection

121

1 That means Miss Vancooten becomes juror
2 number 9.

3 Go to the next three jurors, Mr.
4 O'Connell. Up to and including Miss Telford in
5 seat 7. Any challenge for cause by the People?

6 MS. CHU: No.

7 THE COURT: For cause by the Defense?

8 MR. DRANOVE: None.

9 THE COURT: Peremptory by the People?

10 MS. CHU: Yes. Juror number 6.

11 THE COURT: Mr. Chandler is excused.

12 MS. CHU: That's it.

13 THE COURT: We have two jurors left in
14 this group. Number 5, Mr. O'Connell and juror
15 number 7, Miss Telford. Only two in play.

16 MR. DRANOVE: Number 5.

17 THE COURT: You're challenging
18 Mr. O'Connell?

19 MR. DRANOVE: Yes.

20 THE COURT: Excused.

21 Mrs. Telford is acceptable?

22 MR. DRANOVE: Yes.

23 THE COURT: She becomes juror number 10.

24 Go to the next two jurors in the box.

25 Paszkowski and Gonzalez, for cause by the

Jury Selection

122

1 People?

2 MS. CHU: No.

3 THE COURT: Cause by the Defense? Any for
4 cause by the Defense? For cause.

5 MR. DRANOVE: No, sir.

6 THE COURT: Peremptory by the People?

7 MS. CHU: No.

8 THE COURT: Peremptory by the Defense?

9 MR. DRANOVE: Judge, could we address
10 Mr. Gonzalez? I think that unless he can tell
11 us, or the prosecution can tell us, whether the
12 case is resolved, I would ask that he be
13 challenged for cause?

14 THE COURT: Procedurally we just went to
15 you for challenge for cause. I think you can
16 just ask for peremptory. Maybe there was a mix
17 up in communication. I am sorry if there was a
18 mix up in communication.

19 MR. DRANOVE: It's probably my fault, I
20 apologize. I don't understand how it is when
21 we may very well be a prepped by someone in
22 Miss Chu's office.

23 THE COURT: Again, procedurally we are at
24 the point where it's a bit of a problem. Why
25 don't you exercise a peremptory challenge? You

Jury Selection

123

1 have 20 peremptory challenges. I really don't
2 think you're even going to come close to using
3 them all. If you have any objection, that is
4 simply --

5 MR. DRANOVE: I will challenge him.

6 THE COURT: I don't want to jeopardize --

7 MR. DRANOVE: 19 or 20. May I reassess
8 it?

9 THE COURT: Yes.

10 I think the best way, at this point, to
11 expedite it, because she did already exercise
12 no peremptory for him.

13 He is excused.

14 What about Paszkowski, is she acceptable?

15 MR. DRANOVE: Yes.

16 THE COURT: She becomes juror number 11.

17 Let's go to the next juror in the box.

18 Mr. Spektor.

19 Challenge for cause by the People?

20 MS. CHU: No.

21 THE COURT: Challenge for cause by the
22 Defense?

23 MR. DRANOVE: No.

24 THE COURT: Peremptory by People.

25 MS. CHU: No.

Jury Selection

124

1 THE COURT: Peremptory by Defense?

2 MR. DRANOVE: No.

3 THE COURT: Mr. Spektor is number 12.

4 Let's go to alternate jurors for the first
5 seat, Miss Rennix.

6 Challenge cause by the People?

7 MS. CHU: No.

8 THE COURT: Cause by the Defense?

9 MR. DRANOVE: No.

10 THE COURT: Peremptory by the People?

11 MS. CHU: Yes.

12 THE COURT: Miss Rennix is excused.

13 Mr. Mathis, challenge for cause by the
14 People?

15 MS. CHU: No.

16 THE COURT: Cause by the Defense?

17 MR. DRANOVE: No.

18 THE COURT: Peremptory by the People?

19 MS. CHU: No.

20 THE COURT: Peremptory by the Defense?

21 MR. DRANOVE: Yes.

22 THE COURT: Mr. Mathis is excused.

23 THE COURT: Two per seat. You have each
24 used one.

25 THE COURT: Miss Trafton, challenge for

Jury Selection

125

1 cause by the people?

2 MS. CHU: No.

3 THE COURT: Cause by the Defense?

4 MR. DRANOVE: No.

5 THE COURT: Peremptory by the People?

6 MS. CHU: No.

7 THE COURT: Peremptory by the Defense?

8 MR. DRANOVE: Yes.

9 THE COURT: Miss Trafton is excused.

10 That completes your peremptory for that
11 seat.

12 Miss Koteen, challenge for cause by the
13 People?

14 MS. CHU: No.

15 THE COURT: Cause by the Defense?

16 MR. DRANOVE: No.

17 THE COURT: Peremptory by the People?

18 MS. CHU: No.

19 THE COURT: Miss Koteen becomes alternate
20 number 1.

21 We are looking for alternate number 2.

22 Challenge for cause as to Miss Thompson by
23 the People?

24 MS. CHU: No.

25 THE COURT: By the Defense, for cause.

Jury Selection

126

1 MR. DRANOVE: No.

2 THE COURT: Peremptory by the People?

3 MS. CHU: Yes.

4 THE COURT: Miss Thompson is excused.

5 Miss Rasado, challenge for cause by the
6 People?

7 MS. CHU: No.

8 THE COURT: Cause by the Defense?

9 MR. DRANOVE: No.

10 THE COURT: Peremptory by the People?

11 MS. CHU: No.

12 THE COURT: Peremptory by the Defense?

13 MR. DRANOVE: No.

14 THE COURT: Miss Rasado becomes alternate
15 number 2.

16 Since we have several jurors, let's go for
17 a third alternate.

18 Miss Everett, in seat 17, challenge for
19 cause by the People?

20 MS. CHU: No.

21 THE COURT: Cause by the Defense?

22 MR. DRANOVE: No.

23 THE COURT: Peremptory by the People?

24 MS. CHU: Yes.

25 THE COURT: Miss Everett is excused.

Jury Selection

127

1 Mr. Arnold, challenge for cause by the
2 People?

3 MS. CHU: No.

4 THE COURT: Cause by the Defense?

5 MR. DRANOVE: No.

6 THE COURT: Peremptory by the People?

7 MS. CHU: No.

8 THE COURT: Peremptory by the Defense?

9 MR. DRANOVE: Third alternate seat, Judge?

10 THE COURT: Yes.

11 MR. DRANOVE: No.

12 THE COURT: He will be our third
13 alternate.

14 We have our jurors. We will swear them
15 in. And then recess until tomorrow morning.

16 (Jurors entering)

17 (Whereupon, the remaining selected jurors
18 were duly sworn at this time.)

19 THE COURT: I want to thank each and every
20 one of you for being so patient and answering
21 everyone's questions. I hope you didn't find
22 the process too bad. It could be a lot worse,
23 let me assure you.

24 Now, you have any objection, I am going to
25 let you folks have the rest of the day off. If

Jury Selection

128

1 that's okay with you. Is that all right? You
2 have only been here a minute and already you
3 have agreed on something. Isn't that amazing.

4 Here's the plan. We are going to resume
5 the trial tomorrow morning. We are going to
6 start tomorrow at 10:30 in the morning. I'd
7 like to start on time. Very promptly. So
8 please make a special effort to be here ready
9 to go. It can take a while to get into the
10 building. We have a line of people in the
11 morning, and the elevator can get crowded. So
12 think in terms of getting here by ten o'clock
13 so that you can all be here ready to start at
14 10:30 in the morning.

15 You report to a room that is on this
16 floor. The court officer is going to show you
17 where that room is, and that will be your room
18 for your use for the rest of the trial.

19 It's a very nice room. You're going to
20 have a beautiful view of Manhattan so you can
21 enjoy it.

22 Now, if you should run into any of the
23 parties to this trial from now on, if you see
24 them out of the courtroom, they may be in lobby
25 getting into an elevator, you might see them in

Jury Selection

129

1 the hallway coming into the building, they're
2 not allowed to speak to you. I'm sure you
3 could understand why. So if you happen to see
4 any of them outside, please do not go over to
5 them and start talking to them or asking them
6 anything. They're not allowed to speak to you.

7 Now you have a very important job, so
8 please dress appropriately. I ask the men to
9 wear a tie, if you have one, and I ask the
10 women to dress as you would for an important
11 job.

12 Now, we are going to recess the trial
13 until tomorrow morning. The court officer is
14 going to take you to the jury room to show you
15 where it is you report. And make sure we have
16 reliable contact information for you. So make
17 sure you give her an accurate phone number for
18 where you could be reached in case there's any
19 problem.

20 Please make special effort to be here on
21 time. The earlier we get started tomorrow, the
22 earlier we finish. Okay. Have a very nice
23 afternoon. I just ask the court officer to
24 take the jury to the jury room.

25 Ms. Chu, you'll give her the information

Jury Selection

130

1 about your interview tomorrow, and you want to
2 try to call them from here or you want --

3 THE JUROR: I'm going to call them from
4 the break -- I will be here.

5 THE COURT: See if you can push it back
6 later in the afternoon. Where is it?

7 THE JUROR: 51 and Park.

8 THE COURT: If they could do that, we'll
9 break a little earlier for to you get there.
10 If they could do it at five o'clock.

11 THE JUROR: Let me speak to them.

12 THE COURT: I am going to be here. I will
13 speak to them on the phone for you. If you
14 want to do it another day. Same day at the end
15 of day.

16 THE JUROR: I am trying to find out when
17 next week I would probably be available or
18 later in the day for tomorrow.

19 THE COURT: You want to push it over for a
20 week, if that would be more of a problem for
21 you. At the end of day.

22 (The jury panel was excused.)

23 MR. DRANOVE: I will provide declaration
24 of my client's indigency, if I could, may I
25 just copy the one committed to the U.S. Supreme

Jury Selection

131

1 Court?

2 THE COURT: The answer, even though
3 Mr. Dranove is retained, I feel it's very
4 important that the defense get daily copy in
5 this case. So I am authorizing daily copy on
6 the condition that I get an affirmation from
7 the defense attorney before the trial is over
8 establishing the indigency of the defendant and
9 his inability to pay for daily copy.

10 MR. DRANOVE: Yes, sir.

11 THE COURT: The form of that will work out
12 between us.

13 MR. DRANOVE: With respect to tomorrow,
14 how many witnesses and which witnesses should I
15 hopefully know in advance so I can prepare.

16 THE COURT: I ask Miss Chu to provide, off
17 the record, who anticipate who she will call
18 and try to do that on a daily basis so you can
19 be prepared.

20 We are in recess until tomorrow morning.
21 Be here very punctually tomorrow morning.
22 10:30.

23 MR. DRANOVE: With respect to the matter,
24 if I submit a proposed order for a particular
25 private investigator, reasonable hourly rate,

Jury Selection

132

1 would your Honor consider signing that?

2 THE COURT: I'll consider it. Sure.

3 MR. DRANOVE: Thank you.

4 * * *

5 (Adjourned to May 6, 2009)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Proceedings

2

1 THE COURT: For the record, I want to put
2 two things on the record before the jurors come
3 out.

4 The first is that there was a scheduling
5 issue regarding one of the jurors yesterday who
6 was picked, who informed everyone he had a job
7 interview scheduled for this afternoon at 2:30.
8 I had asked him to try to make an arrangement
9 to switch the job interview to a later time or
10 to another day. And I got permission of
11 counsel to work with the juror regarding this
12 issue.

13 He called me in the afternoon and informed
14 me that he had rescheduled the interview until
15 four o'clock this afternoon today. I indicated
16 it might work out since the parties didn't know
17 about it, we might have a lot of witnesses
18 scheduled for today. And I asked for
19 permission to try to reschedule for later in
20 the week, which he gave me. So I called his
21 potential employer, and they were kind enough
22 to reschedule the interview without any
23 prejudice to him until Friday afternoon at four
24 o'clock. And I called him back to tell him
25 that, and he said that was fine with him too.

Proceedings

3

1 I want to alert everyone that we are going
2 to need to break the trial earlier on Friday in
3 order that he can accommodate that job
4 interview. Hopefully that will work out for
5 everyone.

6 Now, the second thing I want to put on the
7 record is that yesterday the DA made an
8 application to read part of the transcript of
9 the defendant's testimony from the prior trial,
10 and I asked defense counsel to let me know if
11 he has any objection to that.

12 I received a fax this morning indicating
13 that the Defense was requesting a larger
14 portion of the transcript be read back. Since
15 I just got it, I want a chance just to review
16 it. I'll have my decision tomorrow morning. I
17 don't think this has to be resolved right now.
18 So I will take a look at it, read it carefully
19 and have a decision by tomorrow morning as to
20 the extent of the transcript that needs to be
21 read back.

22 Are the People ready to proceed?

23 MS. CHU: Yes, your Honor.

24 THE COURT: Are you ready to proceed, Mr.
25 Dranove.

Proceedings

4

1 MR. DRANOVE: I am.

2 I have inquiry of The Court, if I may?

3 THE COURT: Yes.

4 MR. DRANOVE: I have a new fax machine I
5 am using, started using it yesterday. I faxed
6 over a letter this morning addressing the
7 request for assignment of an investigator. I
8 don't know whether your office received --

9 THE COURT: Yes, I did. I am sorry, I
10 should have mentioned I received that also.

11 MR. DRANOVE: You will have a decision
12 sometime as soon as possible.

13 One pick person I could not track down so
14 far from the phone number information --

15 THE COURT: I will have an answer. I will
16 grant the application, but it's conditional,
17 again, by me receiving an appropriate
18 affirmation as to the indigency and the
19 inability to afford hiring such an
20 investigator.

21 MR. DRANOVE: Judge, may I present that to
22 you Monday?

23 THE COURT: Yes.

24 MR. DRANOVE: Thank you, sir.

25 We are ready to proceed.

Proceedings

5

1 THE COURT: Give me an order.

2 MR. DRANOVE: I understand. I appreciate
3 your accepting this in letter application.

4 THE COURT: Right. I'm granting the
5 application.

6 THE COURT: Tell James to bring out the
7 jury that is present.

8 MS. CHU: As well as defendant's
9 testimony. If we could resolve the issue
10 having to do with what exactly you're going to
11 allow in. She won't be testifying in the
12 afternoon, so if you wanted to address that
13 when we break for the lunch, we can do that at
14 that time.

15 THE COURT: You're talking about the
16 defendant's prior testimony?

17 MR. DRANOVE: That could be read in by the
18 court, any court reporter or the prosecution.
19 Once we reach a decision.

20 MS. CHU: You have to decide what parts
21 are going --

22 THE COURT: I don't think a witness is
23 going to testify about that.

24 MS. CHU: She is actually the reporter
25 that took --

Proceedings

6

1 THE COURT: Is there objection on the
2 accuracy of what is read back?

3 MR. DRANOVE: Correct.

4 MS. CHU: When she testifies, I will do it
5 while she is up there.

6 THE COURT: You don't need --

7 MS. CHU: I don't need -- while she was --

8 THE COURT: If I can.

9 MS. CHU: She is not going to testify this
10 morning. At some time before she testifies, if
11 she itemize exactly what it is that we are
12 going to read from his testimony --

13 THE COURT: I am going to make it clear.
14 She don't have to read it back. It doesn't
15 have to be read back this afternoon.

16 MR. DRANOVE: One more thing.

17 THE COURT: I'm finished.

18 MR. DRANOVE: I had 9:45 a.m. settlement
19 conference in a federal action in Manhattan.
20 It concerns a gentleman who is 23, locked up,
21 seeking to get documents. Started as a civil
22 litigant. Ultimately this federal litigation,
23 the litigation to force documents to be
24 produced. I think it's resolved. I won't know
25 for sure until the Attorney General's office

Proceedings

7

1 and I meet with the judge. I'm scheduled for
2 9:45 in the morning.

3 I could call and explain I'm engaged in
4 trial. I can't get an adjourn -- I can't
5 guarantee I will get an adjournment, so -- I
6 think I'll call later today. From what I
7 understand, I believe today's testimony won't
8 last until five o'clock. I think I can reach
9 Judge McMann's chambers at a reasonable hour.

10 THE COURT: See what you can do. The ADA
11 has a lot of witnesses she has lined up for
12 tomorrow. See what you can do. If you need my
13 help, let me know.

14 COURT OFFICER: Ready for the jury?

15 THE COURT: Yes.

16 COURT OFFICER: Jury entering.

17 COURT CLERK: Jurors are present with the
18 exception of juror number 6, Marlon Antigua.

19 THE COURT: Good morning, ladies and
20 gentlemen. I want to thank you for being so
21 punctual. I want to commend you for being the
22 best looking jury in Brooklyn today.

23 Now, we are missing one juror, and so we
24 can't really start until that juror arrives.
25 We haven't heard anything from this juror, so I

Proceedings

8

1 am hoping the juror will arrive shortly. Let's
2 just wait a few minutes.

3 You can talk, if you want, in the jury box
4 while we are waiting. We are ready to proceed
5 and hopefully the juror will arrive shortly.

6 (pause)

7 COURT CLERK: Jurors are now present and
8 seated.

9 THE COURT: Again, I wish everyone a good
10 morning. Good morning, Mr. Antigua.

11 Now, when we left off yesterday, you were
12 selected, you, the jury, in this case, and what
13 I want to do right now is to go over with you
14 the procedures that we will follow for the rest
15 of this trial so that you can understand
16 exactly what will happen, and also I want to go
17 over with you exactly what your
18 responsibilities will be. Now that you're the
19 jurors in this case.

20 So let's start with the procedure for the
21 trial. The next step in this trial will be an
22 opening statement by the District Attorney,
23 Miss Chu.

24 The law requires that the district
25 attorney make an opening statement, telling you

Opening - Court

9

1 what she intends to prove by way of evidence in
2 this case.

3 After you hear her opening statements, Mr.
4 Dranove, the Defense attorney gets a chance to
5 make an opening statement. But he is under no
6 obligation to make an opening statement. It's
7 entirely optional for the defense attorney.

8 After you've heard the opening statement
9 or statements, the district attorney will then
10 begin presenting her case to you. She is going
11 to call witnesses to the witness stand, and she
12 will get a chance to question each of her
13 witnesses first. We call the district
14 attorney's questioning of each prosecution
15 witness direct examination.

16 After the direct examination is completed,
17 defense counsel gets a chance to question each
18 witness, and, of course, we call that
19 cross-examination.

20 Once the district attorney has finished
21 presenting her witnesses and her evidence to
22 you, the defendant gets a chance to call
23 witnesses and present evidence also. But is
24 under no obligation to call anyone as a witness
25 or present any evidence. It is entirely

Opening - Court

10

1 optional for the defense.

2 After you've heard all of the evidence,
3 the attorneys get one more chance to stand
4 before you to make a closing argument, which we
5 call a summation.

6 And then after you've heard each of their
7 summations, I have to give you specific
8 instructions on the law that you must apply to
9 decide the case.

10 I will then give you the case for your
11 deliberations, and a verdict of either guilty
12 or not guilty for each charge I will list for
13 you on a verdict sheet. It's a piece of paper,
14 it will have the charges on it.

15 Once you have all agreed as to what the
16 right verdict should be for each charge on that
17 verdict sheet, you will check it off under
18 guilty or not guilty. Once you completed
19 filling out the verdict sheet, I'll ask you to
20 send me a note and tell me that you have
21 arrived at a unanimous verdict.

22 I will then ask you to come in the
23 courtroom and announce that verdict through
24 your foreperson, through our foreman, who will
25 be juror number 1. That is the outline for the

Opening - Court

11

1 trial.

2 For the most part, evidence comes through
3 the witnesses who testify at trial. There may
4 also be physical exhibits, which I'll allow you
5 to see, and if these attorneys agree on any
6 facts about which there is no dispute, they
7 will stipulate that they agree on those facts
8 and you may consider them evidence also.

9 Please remember that the questions the
10 attorneys ask during the questioning are not
11 evidence. It is the answers the witnesses give
12 to the attorney's questions that will be
13 evidence.

14 For example, if an attorney asks a
15 witness, do you own an automobile, and the
16 witness answers, no. You must not assume the
17 witness owns an automobile because the attorney
18 asked a question about one. You have to listen
19 to the answer, because together with the
20 question, that is what the evidence will be.

21 You may hear the attorneys make objections
22 during the trial. The law allows an attorney
23 to object to a question asked by the other side
24 or to an answer given by a witness. And you'll
25 hear the attorneys say objection. They may

Opening - Court

12

1 even give a reason for the objection. It's my
2 job to rule on each objection, and I will. If
3 I agree with the attorney, I will say
4 sustained. That means I believe the question
5 or the answer is not legally proper, and you
6 must disregard it. If I disagree with the
7 attorney, I am going to say overruled. That
8 means I believe the question and the answer is
9 legally proper, and you may consider it.

10 Please don't hold it against these
11 attorneys if they make objections that I rule
12 against. They're just doing their job.

13 Now, let's go over your responsibilities.
14 You've been selected to decide what happened in
15 this case. You will decide whether you believe
16 a witness or you don't, what weight you will
17 give any of the witness' testimony, you will
18 decide what the verdict should be in this case.
19 So we call you the judges of the facts.

20 My job is to be judge of the law. The
21 attorneys have to follow the law whether they
22 agree with it or not as I give it to them and
23 so must you.

24 I don't have any power to interfere with
25 your power. As the judge of the facts. And I

Opening - Court

13

1 am very happy to have you here to decide this
2 case. But, please, don't interfere with my
3 power when I tell you something isn't the law,
4 that's it, you have to follow it whether you
5 agree with it or not.

6 Now, because you will decide this case, it
7 is extremely important that you keep an open
8 mind, not form or express any opinion about
9 this case to anyone. When we take a break in
10 the trial, when you go home in the evening,
11 when you're with the other jurors in the jury
12 room during a break, you are not allowed to
13 decide the facts of the case or express any
14 opinion about the case.

15 Now, I encourage you to make this as
16 pleasant a social experience as possible, so
17 when you are together in the jury room, if you
18 want to talk to each other, please feel free to
19 do so. If you want to talk about the beautiful
20 view from the jury room, if you want to talk
21 about the weather, what is on sale at Macy's,
22 whatever interest you have, by all means, talk
23 to each other. But not about the case. You
24 have to wait until the end of the trial when
25 your deliberations begin to talk about the

Opening - Court

14

1 case.

2 Now, we have specific rules you must
3 follow:

4 You're not allowed to go out to the scene
5 where this crime is alleged to have occurred to
6 look at it. You have to decide the case solely
7 on the evidence. Should this case be reported
8 in the media, you are not allowed to read or
9 listen to any accounts of it, and if you become
10 aware of an attempt by anyone to improperly
11 influence you or any other members of the jury,
12 you must promptly report that to one of our
13 court officers and we will take immediate
14 corrective action.

15 Now, let me go over with you a couple of
16 other things that are very important for you to
17 know. You may have seen trials on television
18 or in the movies, and they show jurors sitting
19 in a jury box with pads and pencils and the
20 jurors are taking notes while the witnesses are
21 testifying. Here in New York, we do not
22 believe that in most cases jurors should try to
23 take notes. Why? Well, first of all, this is
24 not going to be that long of a trial.
25 Secondly, you are not chosen for your

Opening - Court

15

1 note-taking abilities. It's very hard to try
2 to write down accurately what witnesses are
3 saying and hear everything. And, third, and
4 most importantly, we have a court reporter who
5 will be taking down everything as accurately as
6 possible during this trial. So if during your
7 deliberations you do have some question amongst
8 yourselves about what a witness said, you can
9 simply ask to have the testimony read back to
10 you with complete assurance that that is what
11 the witness said. So I don't want you to try
12 to take notes. I want you to sit back and
13 listen.

14 If at any time you don't hear something,
15 don't be ashamed to let me know. All you have
16 to do is raise your hand in the jury box,
17 that's a signal to me to have the witness
18 repeat the answer for you or I'll have the
19 court reporter read back what the witness just
20 said.

21 Now, another thing that is very important
22 for you to understand is that this is not the
23 only case I have to handle. Sometimes I have
24 other matters that they assign me. I wish I
25 only had one case at a time, my life would be a

Opening - Court

16

1 lot easier. It doesn't work that way. I will
2 always excuse you when I do other business.
3 I think it is very inconsiderate for a judge to
4 keep jurors waiting around while a judge does
5 other business.

6 Try to be very punctual. If you didn't
7 figure it out already, I am going to tell you
8 right now, when I give you a time that we are
9 going to work on the trial, that is the time I
10 would like everyone to be here. Sometimes we
11 do have to wait for a witness, that is beyond
12 anyone's control. But other than that, we
13 should proceed as punctually as possible, and I
14 do appreciate your cooperation.

15 The other thing I want to mention to you
16 is that we are now living in the world of the
17 internet. Use of the computer has become very
18 common. I want to instruct you right now that
19 you must resist any temptation to try to go on
20 the internet to try to find out any information
21 about the case or any of the people involved in
22 this case. You can't do that. I am sure you
23 could understand that there is a lot of
24 miscellaneous information and inaccurate
25 information out there, and you have to decide

Opening - Court

17

1 this case solely on the evidence in this
2 courtroom. So, please, if you have a computer,
3 you use the internet, do not try to find out
4 any information about this case during this
5 trial on-line. I appreciate your cooperation.
6 That completes what I have to tell you.

7 We are now ready to move into the next
8 step in this trial, which will be the opening
9 statement by Miss Chu.

10 You may proceed when you're ready.

11 MS. CHU: Thank you.

12 Good morning, ladies and gentlemen:

13 It was just suppose to be another Saturday
14 night hanging out with his friends. That is
15 what Edgar Ojeda had planned for that Saturday
16 night, February 26, 2005.

17 They began their day earlier that Saturday
18 morning going shopping right here in downtown
19 Brooklyn. And they spent the day together, and
20 after going home until around the evening time,
21 they arranged to meet up again so they can go
22 hang out that night.

23 Now, they ended up at a bar called El
24 Borinquen Bar. It was located at 314 39
25 Street, here in the Sunset Park section of

Opening - Chu

18

1 Brooklyn, and they ended up there after trying
2 to go to a party out in Fort Greene. They
3 couldn't find parking, then they stopped by a
4 strip club over on Third Avenue. Then they
5 ended up at this bar.

6 What you will learn about El Borinquen
7 Bar, it's a local bar. A local bar on 39 and
8 Third. It's been owned by a lot of people,
9 Amnesta Bar, and now known as El Borinquen Bar.
10 A bar that is not too big. It's right there on
11 the corner, right on 39 and Third. If you know
12 the overpass of the BQE, it's right under there
13 diagonally across is the Costco.

14 What you will learn, it's a narrow bar.
15 It's an entrance on 39 Street. There is also a
16 side entrance on Third Avenue. As you walk
17 into the bar, it's narrow and it has a bar that
18 runs the length of the bar, about halfway down
19 on the left-hand side. There are some tables
20 and chairs set up on the right-hand side, right
21 by where this side entrance is. Side exit is.
22 There's also a jukebox over there. About
23 halfway into the bar towards the back, there is
24 a dance floor on the right-hand side, then
25 there are rest rooms in the back, far back left

Opening - Chu

19

1 corner.

2 Now, when Edgar and his friends, it's
3 Carlos Solomon, Marcus Carrasquillo and
4 Jonathan Dominguez, when they arrived at this
5 bar, it's now after midnight. So, technically,
6 it's the next day, February 27, 2005, little
7 bit after one o'clock. And they get some
8 beers, and Edgar and Carlos kind of set up near
9 where the jukebox is. Standing where that side
10 entrance is.

11 What you'll all learn, the two guys, they
12 were with Marcus and Jonathan, they know some
13 people at the bar. So they're kind of hanging
14 out by the bar area conversing with them. And
15 about half hour into them being at this bar,
16 the defendant, that man there, Enrique Rivera,
17 walks up to Edgar Ojeda, while standing by this
18 door, and says something, kind of leans in and
19 says something to him. And Carlos, who's
20 standing next to him, can't hear, but he sees
21 Edgar responds and says something. Next thing
22 that happens, they see that the defendant
23 either push or punch Edgar somewhere in this
24 area (indicating). The body area. Then Carlos
25 goes to try to protect Edgar, but Carlos is a

Opening - Chu

20a

1 lot taller than Edgar. Edgar is fairly -- is
2 five foot six, and Carlos is six foot two. He
3 goes to try to protect Edgar, tries to go after
4 the defendant and some of the people that he's
5 with. In the process of doing that, they run
6 out, he gets alerted, and at that point Edgar
7 realizes that the defendant didn't punch or
8 push him. What he did, he had stabbed him.
9 And Edgar takes off his scarf and blood begins
10 to pour out of him. He says, "I think I got
11 stabbed. He's alerting his friend, Carlos and
12 Jonathan and Marcus. What they do when they
13 realize, indeed, their friend, Edgar, is
14 stabbed, they turn -- their attentions are now
15 on him and they try to get him out of the bar.

16 What you'll learn, they try and control
17 the bleeding, they try to take him out of bar.
18 Their car is right on Third Avenue, right
19 underneath the underpass on the other side of
20 Third Avenue facing towards the higher numbers.
21 So they try to walk him out there, take him
22 over there to the car and they tried to rush
23 him over to Lutheran Medical Center, which is
24 about 20 blocks away on 58 Street.

25 And you'll learn while they're there,

Opening - Chu

21a

1 they're trying to tell Edgar to hold on, they
2 are trying to prevent the bleeding from
3 happening or keep going. When they arrived at
4 the hospital, they bring him right in. Carlos
5 picked him up, they arrived at the hospital
6 about two o'clock, that is the time they admit
7 him into the hospital. And unfortunately the
8 personnel at Lutheran Medical Center are unable
9 to do anything for Edgar and he's pronounced
10 dead at 2:22 in the morning on February 27,
11 2005. At the hands of that man, (indicating)
12 Enrique Rivera.

13 Now, you will learn, based upon the fact
14 that Edgar had come to the hospital and expired
15 their, the police get notified. Because Carlos
16 and the -- frantic Carlos, Marcus and Jonathan,
17 they're frantic -- I am sorry -- attempts to
18 bring Edgar to the hospital, they are not
19 thinking about calling 911. They just take him
20 to the hospital. So the hospital personnel
21 actually called. And they confirmed that
22 someone was injured there, and Carlos, Marcus
23 and Jonathan, they remain at the hospital.

24 And what you will learn, there was an
25 officer from the 72 Precinct, person by the

Opening - Chu

22a

1 name of Justin Harriman, he's assigned to
2 respond to the hospital, and he sees Marcus,
3 Jonathan and Carlos there and he talks to them
4 and he confirmed that, yes, indeed, there was
5 someone that was injured and killed.

6 They find out where the location is. They
7 have an officer arrive at the bar, but by the
8 time the officer gets there, the bar's been
9 closed. You see fresh water in front of it
10 cleaned up. So they have someone sit there at
11 the location, the El Borinquen Bar and preserve
12 it as best they can. They set up a crime scene
13 tape.

14 You will learn there was police officers
15 that was assigned to sit on the location to
16 make sure that no one comes in and out or goes
17 inside. In the meantime, they are trying to
18 get a hold of the bar owner so that they can
19 get inside.

20 But in the meantime, one of the police
21 officers that gets assigned from the Crime
22 Scene Unit is the Detective Michael Cunningham,
23 and he gets assigned to process the scene and
24 when he gets to the bar, the bar is still
25 closed. It's about 4:40 in the morning. When

Opening - Chu

23a

1 he gets there, when he does, he tries to
2 process as best he can. He can't get inside.

3 What he does, he takes photographs of the
4 outside of the location on 39 and Third. He
5 takes the Third Avenue view, he takes from the
6 39th view. He takes it from across street. He
7 takes measurements from inside. While he's
8 there, he notices that sidewalk looks like it's
9 been washed. It's actually fresh blood at the
10 corner of 39th and Third. Drops of blood on
11 the corner. He takes photographs of that. He
12 takes samples. How he takes samples, he'll
13 explain to you. You get a Q-tip, he swabs the
14 area, he puts it all in a package, he wrapped
15 it up and he then sends that off for testing in
16 the DNA lab.

17 Now, in the meantime, Detective John
18 Darino from the 72 Precinct, he is assigned
19 this case. And he too speaks with Marcus,
20 Jonathan and Carlos about what had transpired.
21 And in the course of speaking to them, they
22 learn about some other people and they want to
23 talk to people that were at the bar. And in
24 the course of their investigation, they learn
25 that the defendant, his brother and two other

Opening - Chu

24a

1 of his friends were at this location, and they
2 begin to look for the defendant.

3 What you will learn is that on
4 February 28, the next day, about one in the
5 morning, Detective James Gaynor, who's working
6 with the Detective Darino, goes to the
7 defendant's parents' house at 30 Bush Street
8 and he goes there. When Detective Gaynor goes
9 there, he actually knows he has some
10 information regarding whatever the defendant's
11 clothing was at the time of this incident.
12 Camouflage jacket. Hoodie sweatshirt. He
13 knows what the description is. So he gets into
14 the location because the defendant's mother
15 opens the door for him. While he's inside, he
16 observed a pile of clothes, camouflage jacket,
17 in a pile inside the location. And true, the
18 use of an interpreter, a detective, a Spanish
19 speaking detective, from the precinct, he is
20 able to communicate with the defendant's
21 mother. And he recovers and vouchers that
22 clothing that he finds at 30 Bush Street.

23 Now, at about 4:20 that same morning,
24 February 28, 2005, Detective Darino, and his
25 team of investigators, find the defendant in

Opening - Chu

25a

1 Queens. And they bring him back to the 72
2 Precinct, and he put him in an interview room.

3 Now, once the defendant arrived back at
4 the precinct, you will learn he was brought
5 into the interview room and he was spoken to by
6 Detective Darino and Detective Gaynor, but
7 before they speak to him, they read what you
8 all know as Miranda rights.

9 After the defendant hears his Miranda
10 rights, he agrees to speak with them. And what
11 he tells the detective is that he was at that
12 bar that night, and sometime while he was there
13 he and the victim kept staring at each other.
14 And sometime by the end of the night, he ends
15 up by the bar and Mr. Ojeda was still giving
16 him looks. And asked the defendant what's up.
17 And the defendant says -- at that point he
18 says, what seems to be your problem, to the
19 victim. And he said at that point, he terms
20 the phrase, he says, "the crowd rose." And he
21 felt punches and grabbing, so he took out a
22 knife and he used it in self-defense. And
23 after he made his statement, the detectives go,
24 all right, well, would you like to put that
25 down on paper? So they give him a pen and

Opening - Chu

26a

1 paper, and he writes down pretty much the same
2 thing that he had just told them orally.

3 Once he's done writing out this statement,
4 you'll learn that he was asked whether he
5 wanted to speak with the District Attorney's
6 office. And he says, yes. And so what happens
7 after that is around 10:30 in the morning that
8 same day. February 28, 2005, an assistant
9 district attorney by the name of Jennifer
10 Sipress comes into the precinct and speaks to
11 the defendant.

12 It's common procedure in the District
13 Attorney's office that when you speak to a
14 defendant that it is recorded. It is recorded,
15 video taped. It's video taped. And that is
16 what's done with the defendant. And you'll
17 actually get to see that video tape of the
18 defendant. And, again, he is read his rights
19 by ADA Jennifer Sipress, and what he says this
20 time is that while he's inside the bar now the
21 victim bumps him. And when the victim bumps
22 him, they keep giving each other eyes, and when
23 the defendant goes up to the bar, he asks the
24 victim what is his problem and then he feels
25 someone hit him from his side. And the victim

Opening - Chu

27a

1 was still in front of him, so he says he then
2 takes his pocket knife out and he swings it
3 around and then he ran immediately out of the
4 location. And he ditches the knife somewhere,
5 got into his car and he drove off.

6 Now, after this statement is done and
7 you'll get to see that statement, you'll learn
8 that the defendant was put in a line-up. He
9 was put in line-ups. And when he was put
10 line-ups, he was identified by Carlos Solomon,
11 as well as a bouncer at the bar that was there
12 as a patron that night. As being the person
13 that they saw punching or pushing Edgar Ojeda
14 just prior to him realizing that he had been
15 stabbed.

16 Now, after Lutheran Medical Center was
17 unable to save Mr. Ojeda's life, his body was
18 then taken to the Medical Examiner's office
19 here in Kings County. And there was an autopsy
20 that was conducted by a Dr. Frederic. You're
21 going to hear from her as well. What she found
22 upon her autopsy of Mr. Ojeda's body is that he
23 sustained three stab wounds to his body. He
24 received one in the left, upper chest. This
25 stab wound cut through the skin, goes between

Opening - Chu

28a

1 the area of the ribs, cuts through a rib and
2 punctures his left lung. The knife wound is
3 actually five inches deep, that means the knife
4 went in five inches. In the process of going
5 in five inches into his body, it goes and
6 punctures his lung about one and a quarter
7 inch. So that causes his lung to bleed. There
8 were two other stab wounds to him. On his
9 back, left. Those two stab wounds, two and
10 three quarter inches low, and the other one is
11 two inches deep on the back. And what she is
12 going to tell you is that all of those stab
13 wounds have what she called acute angle on
14 either side, which means that the object, or
15 the knife, was sharp on both ends. They all
16 match having the same pattern. And it's
17 clearly created by some sort of weapon. It
18 could be a puncture by someone using that hand
19 to poke a hole into someone's body like that
20 (indicating).

21 Now, with those wounds, basically Ojeda
22 bled to death. His lungs made out of blood,
23 and it just bleeds out and that is why they
24 were unable to save his life when he gets to
25 the hospital.

Opening - Chu

29a

1 Now, in the meantime, the clothing that
2 was found at 30 Bush Street, which the
3 defendant at a later proceeding admits that he
4 was wearing that night, gets sent to the
5 medical examiner's office, forensic biology
6 department, which is the DNA lab.

7 What happens is, there is a person by the
8 name of Linda Razzano, she is a criminis there,
9 she looks at this bleeding. There is a jacket,
10 there is a hoodie, there are pants and there is
11 also a hat. And what she finds that's on this
12 hat that was worn by the defendant that night,
13 there are two stains of blood. Two stains of
14 blood on the front and on the back. And she
15 tests that hat, and not only do they show blood
16 stains from the front and back of the
17 defendant's hat belong to Edgar Ojeda, but all
18 of the samples that were taken by Detective
19 Sullivan -- Detective Cunningham -- I am
20 sorry -- there was another detective that gets
21 there and gets to go inside, and he finds three
22 other samples of blood from that side exit
23 where Mr. Ojeda and his friend Carlos were
24 standing. Three blood samples that gets there.
25 So that three blood samples, in addition to the

Opening - Chu

300a

1 one Cunningham found outside on the street
2 corner, in addition to the two stains that are
3 on the defendant's hat belonged to Edgar Ojeda.

4 Now, you're going to hear from Mr. Ojeda's
5 friends. You're going to hear from Marcus.
6 You're going to hear from Carlos. You're going
7 to hear from Jonathan. You're going hear from
8 the bouncer, whose name is Enrique Navarette,
9 who was present at the bar that night and saw
10 what happened. You're going hear from the
11 police officers that responds. You're going to
12 hear from Detective Darino, who takes
13 statements from the defendant, and you're going
14 to hear from the ADA, as well as the DNA
15 expert, and Dr. Frederic.

16 And after you hear all of the evidence in
17 this case, I am going to come back, and I am
18 going to speak with you like I am speaking with
19 you now. I am going to show you how the
20 evidence in this case will have proven that the
21 defendant, Enrique Rivera, is guilty of causing
22 the death of Edgar Ojeda on February 27, 2005.

23 Thank you.

24 THE COURT: Dr. Dranove, do you wish to
25 make an opening statement?

Opening - Dranove/Defense

31a

1 MR. DRANOVE: I do, your Honor.

2 THE COURT: Then you may proceed when
3 you're ready.

4 MR. DRANOVE: Thank you.

5 MR. DRANOVE: Good morning: I am Joel
6 Dranove, I represent Mr. Rivera.

7 I listened, as did you, very carefully to
8 the opening statement, and I wish to give you
9 my opening statement telling you what else you
10 will hear that is critical. That you need to
11 understand that there was a rush, by Detective
12 Darino on his first homicide case, to arrest
13 someone real fast and he did. And the fact
14 that you will hear my client's statement is
15 totally inconsistent with the injuries. The
16 eyewitness observations are totally
17 inconsistent with the injury.

18 Those facts known to Detective Darino has
19 nothing to do with what he did. It was his
20 first case several years ago as a homicide
21 investigator. He was able to question my
22 client when he awoke from sleeping in the
23 middle of the night in a precinct at five in
24 the morning. In that precinct was my client's
25 brother, my client was -- well, a victim of --

Opening - Dranove/Defense

32a

1 you will find psychological manipulation by the
2 detective. Whatever the detective said to my
3 client and my client said to the detective
4 before the video tape was never recorded.

5 And you'll hear there was a recording
6 device in the precinct. It was not used. They
7 chose not to record what they said to my
8 client.

9 You will hear that after my client made
10 his statement, his brother was released. They
11 got -- do they get the right person? Didn't
12 matter, Detective Darino wrote, "case closed"
13 that morning on his folder. "Case closed."

14 You will hear that the detective was so
15 convincing that he convinced himself of certain
16 things that he knew were false and yet he put
17 them into police reports knowing they were
18 false. And they're very important. Because he
19 put them into the document that brought my
20 client into court. The complaint. He said he
21 was --

22 MS. CHU: Objection.

23 THE COURT: Overruled.

24 MR. DRANOVE: That witnesses saw my client
25 strike Edgar Ojeda repeatedly about the chest

Opening - Dranove/Defense

33a

1 and the back with a closed fist. That is not
2 true. Noone saw my client strike Mr. Ojeda,
3 the victim, on this tragic incident on the
4 back. Noone. In fact, Mr. Solomon will say
5 this case is a few years old, we have some idea
6 people will say --

7 MS. CHU: Objection, your Honor.

8 THE COURT: Overruled.

9 MR. DRANOVE: Punch with a closed fist one
10 time, his friend Mr. Ojeda and run away.
11 That's what Mr. Solomon will say. And he will
12 say he ran after my client, and he got to the
13 door of the door, my client left and bouncer
14 prevented him from going after my client. And
15 when he was there, the bouncer was preventing
16 him from going after my client, whatever was
17 going on behind him was going on. There was
18 screaming, a commotion and it continued for a
19 long time. Mr. Solomon never saw my client
20 with a knife in his hand. He said what he saw.
21 Closed fist.

22 Now, this is an interesting bar because it
23 actually takes security seriously. Whoever
24 went as a patron is searched. You'll hear
25 testimony about that. Careful search. They

Opening - Dranove/Defense

34a

1 don't have weapons. But it's a bar. This is a
2 bar. Bar employees and knives. You won't hear
3 from the bartenders. I don't think the
4 prosecution is going to call any on-duty
5 bouncer. I think Mr. Navarette was off duty
6 and just there that night.

7 Now, Mr. Solomon came back to his friend,
8 and at some time observed blood coming from
9 Mr. Ojeda. There was a commotion, there was a
10 tremendous amount of commotion going on and my
11 client wasn't there. Something was going on
12 between people, not including my client, and it
13 included stabbing the victim and his death.

14 Detective Darino also said that the
15 witness, the friends of Mr. Ojeda, saw him
16 bleeding from his chest and neck and back, not
17 true. It's under oath. That was true
18 according to the detective. The detective also
19 said that --

20 MS. CHU: Objection, your Honor. This
21 is --

22 THE COURT: Overruled. That is what he
23 says the evidence will show.

24 MS. CHU: That is not what he said.

25 THE COURT: That is what he is saying the

Opening - Dranove/Defense

35a

1 evidence will show.

2 MR. DRANOVE: Deponent states he further
3 informed by the defendant's own word that the
4 defendant pulled out a knife and swung the
5 knife at the victim. My client never said he
6 swung a knife at the victim. He never said
7 that. He never said, I swung the knife at the
8 victim. That is in the complaint signed by
9 Detective Darino immediately beneath the words
10 false statements made in this document are
11 punishable as a Class A misdemeanor, pursuant
12 to Section 210.45 of the Penal Law. I believe
13 you'll find he made false statements. I
14 believe you'll find they are punishable under
15 Penal Law. I believe you'll find he wasn't
16 punished. And then he was convinced this case
17 is closed and never went further. And the
18 report he submitted and he signed, known as a
19 complaint follow-up.

20 He wrote on February 28, 2005, at
21 approximately 5:15, Enrique Rivera, after being
22 advised of his rights, made an admission to
23 stabbing the victim in this case. Mr. Rivera
24 never made an admission to stabbing anybody in
25 this case. Now, that is a series of false

Opening - Dranove/Defense

36a

1 statements by the detective in his zeal to
2 close the case. He closed it.

3 You'll find also from the witnesses, the
4 prosecution mentioned Miss Razzano -- I mean
5 Mrs. Razzano in particular something very
6 interesting. The DNA expert in an official
7 report requested permission to compare the DNA
8 found in the hat of somebody they will say is
9 my client, with the DNA of the second person
10 whose blood was found in and on the hat. There
11 was DNA from two people in the blood spot on
12 the hat that's going to show up in the charts
13 that the witness will show you. A second
14 person's blood is in the blood spot where
15 Mr. Ojeda's blood. It's going to come out
16 during the trial. It's going to come out
17 during the trial my client had no injuries.
18 This is an open question, four years old now,
19 whose blood is it? The DNA expert said, get me
20 a sample. Either the prosecution did or did
21 not. We don't know. And why not, I don't
22 know. But the question is, who else was
23 bleeding there and why? Was it someone with a
24 knife, his hand slid on the blade? We'll never
25 know. Was that somebody injured whoever blood

Opening - Dranove/Defense

37a

1 was injured in addition to Mr. Ojeda who passed
2 away.

3 The detective has, and you will see, had
4 an opportunity to talk to my client. He sees
5 him. My client's supposedly has made a
6 confession or a statement whatever enough for
7 the detective to close the case, and he asked
8 my client where is the knife? Rather important
9 question. My client says, I threw it away.
10 What did you do? Where'd you throw it? Nope.
11 Even the detective doesn't believe that's so.
12 He don't even ask him where is the knife. But
13 the case was closed. It's unfortunate it was
14 closed before the investigation was completed.
15 But by stating, case close, the investigation
16 was brought to a close.

17 Why was the bar cleaned up? I don't think
18 anyone's going to testify to that.

19 In the bar there was a long period of a
20 five between persons unknown except but for
21 Carlos Solomon, one or two of his friends and
22 the at some time at the end of this, Mr. Ojeda
23 says, I am bleeding, get me to the hospital.
24 Mr. Ojeda doesn't say any one in particular,
25 guy in the camouflage, or the guy with the cap,

Opening - Dranove/Defense

38a

1 or the guy with the hoodie, nothing like that
2 is said by him. He just said, I'm bleeding.

3 My client also, on that Saturday night,
4 thought it was just another Saturday night. He
5 went with one brother and some friends. To a
6 local bar. And his life was changed forever.
7 Many years ago, he plead not guilty. I believe
8 you'll find that so.

9 Thank you very much.

10 * * * *

11 (The rest of this page is blank, followed
12 by the first witness' testimony, P.O.
13 Lopiccolo.)
14
15
16
17
18
19
20
21
22
23
24
25